

THE 809 c 11
CASE
OF
IRELAND's
Being BOUND by
Acts of Parliament
IN
ENGLAND,
Stated.

B Y
William Molyneux, *K*
of Dublin, Esq;

Printed in the Year, M. DCC. VI.

OF THE
IRISH

Being



Antiquities

ENGLAND

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BY
WILLIAM MASONRY
of Dublin, Esq.

Printed in the Year M.D.C.C.

TO THE
KING.

SIR,

THE Expedition Your MAJESTY Undertook into *England*, to Rescue these Nations from Arbitrary Power, and those Unjust Invasions that were made on our Religion, Laws, Rights and Liberties, was an Action in it Self so *Great*, and of such Immense Benefit to our Distressed Countries, that 'tis Impossible to give it a Representation so *Glorious* as it Deserves. Of all Your Majesty's Kingdoms, none was more sensible of the Happy Effects thereof, than Your *Kingdom of Ireland*, which from
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the Depth of Misery and Despair, is Raised by Your Majesty to a Prosperous And Flourishing Condition. And we presume most humbly to Implore the Continuance of Your Majesty's Graces to us, by Protecting and Defending those *Rights* and *Liberties* which we have Enjoy'd under the Crown of *England* for above Five Hundred Years, and which some of late do Endeavour to Violate. Your most Excellent Majesty is the *Common Indulgent Father* of all your Countries; and have an *Equal* Regard to the *Birth-Right* of all Your Children; and will not permit the *Eldest*, because the *Strongest*, to Encroach on the Possessions of the *Younger*: Especially considering with what Duty, Loyalty, and Filial Obedience, we have ever behav'd our selves to Your Majesty: Infomuch that I take leave to Assert, That Your Majesty has not in all Your Dominions a People more *United* and *Steady* to Your *Interests*, than the *Protestants* of *Ireland*: Which has manifestly Appear'd in all our Actions and Parliamentary Proceedings, since Your Majesty's Happy

py Accession to the Throne. To Relieve the Distress'd, has ever been the Peculiar Character of Your Majesty's Glorious Family. The United Provinces have found this in Your Famous Ancestors: And all Europe has been Sensible of this in Your Royal Person. To this End more particularly you came into these Kingdoms, as Your Majesty has been pleas'd to Declare: And as You have Establish'd the Rights and Liberties of England on a Foundation that, we hope, can never be shaken; So we doubt not but Your Sacred Majesty will have a Tender Care of Your Poor Subjects of Ireland, who are Equally Your Subjects, as the rest of Your People.

Pardon, I most Humbly beseech Your Majesty, my Presumption, in Appealing to You on this Occasion: Nothing but the Dignity and Weight of the Subject, can Excuse my Boldness herein: But if That be Consider'd, it Deserves the Regard of the Greatest Prince; 'Tis no less than the Rights and Liberties of one of His Kingdoms, on which their Religion, their Property, their All

Depends; and which they have Enjoyed for Five Hundred Years past. This, I think, I have clearly shewn in the following Leaves: I am sure, if my *Management* thereof, were sutable to the *Justice* of our Cause, our *Friends of England* can no longer Doubt it.

At Your Majesty's Feet therefore, I throw it; and with it the Unworthy Author thereof,

(*May it please Your Majesty*)

Your Majesty's

Most Dutiful, Loyal,

and Obedient

Subject and Servant,

William Molyneux;

P R E F A C E

T O T H E

R E A D E R .

I Have nothing to Offer in this Preface, more than to let the Reader know, how Unconcern'd I am in any of those Particular Inducements, which might seem at this Juncture to have occasion'd the following Discourse.

I have not any Concern in Wool, or the Wool-Trade. I am no wise Interested in the Forfeitures, or Grants. I am not at all Solicitous, whether the Bishop, or Society of Derry Recover the Land they Contest about.

So that, I think, I am as Free from any Personal Prejudice in this Cause, as
t'is

'tis possible to Expect any Man should be, that has an Estate and Property in this Kingdom, and who is a Member of Parliament therein. I hope therefore 'tis a Publick Principle that has mov'd me to this Undertaking: I am sure, I am not Conscious to my Self of any other Intention.

I have heard it has been said, That perhaps I might run some Hazard in Attempting this Argument; But I am not at all Apprehensive of any such Danger: We are in a Miserable Condition indeed, if we may not be Allow'd to Complain, when we think we are Hurt; and to give our Reasons with all Modesty and Submission. But were it otherwise, it would not in the least Affect or Discourage me in an Attempt, where I think my Cause Good, and my Country Concern'd, and where I am fully perswaded, the True Interest of England, is as Deeply Engaged, as the Protestant Interest of Ireland.

The Great and Just Council of England freely Allows all Addresses of this sort. To Receive and Hear Grievnces, is a great part of their Business; and to Redress them, is their Chief Glory. But this is
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not to be done, till they are laid before
them, and fairlyS tated for their Conside-
ration.

This I have endeavour'd in the follow-
ing Paper. What Success it may have, I
am not very Sollicitous about. I have done
what I thought was my Duty, and Com-
mit the Event to GOD Almighty, and
the Wise Council of England.

Dublin, Febr. 8.

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1698.

W. MOLYNEUX.

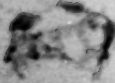
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Dublin Feb. 8.

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W. MOLYNEUX.



The CASE
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STATED.

I HAVE ever been so fully persuaded of the strict Justice of the Parliament of *England*, that I could never think that any of Their Proceedings, which might seem to have the least Tendency to Hardship on their Neighbours, could arise from any thing but want of Due Information, and a right State of the Business under their Consideration.

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The want of which, in Matters where in another People are chiefly Concern'd, is no Defect in the Parliament of *England*, but is highly Blameable in the Persons whose Affair is Transacting, and who permit that Illustrious Body of Senators to be Misinform'd, without giving them that Light that might Rectifie them.

I could never Imagine that those Great Assertors of their Own Liberties and Rights, could ever think of making the least Breach in the Rights and Liberties of their Neighbours, unless they thought that they had Right so to do; and this they might well surmise, if their Neighbours quietly see their Inclosures Invaded, without *Expostulating* the Matter at least, and shewing Reasons, why they may think that Hardships are put upon them therein.

The Consideration hereof has Excited me to undertake this Disquisition, which I do with all Imaginable Diffidence of my own Performance,

Ince, and with the most profound Respect and Deference to that August Senate. The present Juncture of Affairs, when the Business of *Ireland* is under the Consideration of both Houses of the English Parliament, seems to require this from some Person; and seeing all Others silent, I venture to Expose my own Weakness, rather than be wanting at this time to *my Country*. I might say indeed to *Mankind*; for 'tis the Cause of the whole Race of *Adam*, that I Argue: *Liberty* seems the Inherent Right of all *Mankind*; and on whatsoever Ground any one Nation can Challenge it to themselves; on the same Reason may the Rest of *Adam's* Children Expect it.

If what I Offer herein seems to carry any Weight, in relation to my own Poor Country, I shall be abundantly happy in the Attempt. But if after all, the Great Council of *England* Resolve the contrary, I shall then believe my self to be in an Error, and with the lowest Submission ask Par-

don for my Assurance. However, I humbly presume I shall not be hardly Censur'd by them, for offering to lay before them a fair State of our Case; by such Information as I can procure, especially when at the same time I declare my Intention of a Submissive Acquiescence in whatever they Resolve for, or against what I Offer.

The Subject therefore of our present Disquisition shall be, *How far the Parliament of England may think it Reasonable to intermeddle with the Affairs of Ireland, and Bind us up by Laws made in their House.*

And seeing the Right which England may pretend to, for Binding us by their Acts of Parliament, can be founded only on the Imaginary Title of Conquest or Purchase, or on Precedents and Matters of Record; We shall Enquire into the following Particulars.

(I.) First, How Ireland became a Kingdom Annex'd to the Crown of England. And here we shall at large give

give a faithful Narrative of the *First Expedition of the Britains* into this Country, and King *Henry the Second's* Arrival here, such as our best Historians give us.

(2.) Secondly, We shall Enquire, Whether this Expedition, and the *English* Settlement that afterwards followed thereon, can properly be call'd a *Conquest*? Or whether any Victories obtain'd by the *English*, in any succeeding Ages in this Kingdom, upon any *Rebellion*, may be call'd a *Conquest* thereof.

(3.) Thirdly, Granting that it were a *Conquest*, we shall Enquire what *Title* a *Conquest* gives.

(4) Fourthly, We shall Enquire what *Concessions* have been from time to time made to *Ireland*, to take off what even the most Rigorous Assertors of a Conquerour's Title do pretend to. And herein we shall shew by what Degrees the *English* Form of Government, and the *English* Statute-Laws, came to be received among us:

And

And this shall appear, to be wholly by the *Consent* of the People and Parliament of *Ireland*.

(5.) *Fifthly*, We shall Enquire into the Precedents and Opinions of the Learned in the Laws, relating to this Matter, with Observations thereon.

(6.) *Sixtly*, We shall Consider the Reasons and Arguments, that may be farther Offered on one side and t^o other; and shall draw some General Conclusions from the Whole.

As to the First, We shall find the History of the First Expedition of the *English* into *Ireland*, to be briefly thus: In the Reign of King *Henry* the Second, *Dermot Fitzmurchard*, commonly called *Mac-Morrough*, Prince of *Leinster*, who was a Man Cruel and Oppressive, after many Battles with other Princes of *Ireland*, and being Beaten and put to Flight by them, Apply'd for Relief to King *Henry* the Second, who was then busied in *Aquitain*; the King was not then in such Circumstances as to afford him much

Help :

Help: However thus much he did for
 him, By Letters Patents he granted
 License to all his Subjects throughout
 his Dominions, to Assist the said Prince
 to Recover his Dominions. These
 Letters Patents are to be seen in *Giral-*
dus Cambrensis, who was Historiogra-
 pher and Secretary to King *Hen. II.*
 and Accompanied him in his Expedi-
 tion into *Ireland*, and from him it is
 that we have this Relation. The *Irish*
Prince brought these Letters into *Eng-*
land, and caused them to be Read in
 the Audience of many People Beat-
 ing up, as it were, for Voluntiers and
 free Adventurers into *Ireland*. At
 length, *Richard* Earl of *Strigul* (now
Chepstow in *Monmouthshire*) Son of Earl
Gilbert, call'd *Strongbow*, Agreed with
 him, to Assist him in the Recovery
 of his Country, on Condition, that
Dermot should give him his Eldest
 Daughter in Marriage, and his King-
 dom of *Leinster* after his Death. About
 the same time *Robert Fitz-Stephen*,
 Governour of *Aberlesie* in *Wales*, A-
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greed likewise with *Dermot* to help him, on Condition that he would grant to him and *Maurice Fitzgerald* in Fee the City of *Wexford*, with two Cantreds of Hundreds of Land near adjoining.

These Adventurers afterwards went over, and were Successful in Treating with the *Irish*, and Taking *Wexford*, *Waterford*, *Dublin*, and other Places. Whereupon Earl *Richard Strongbow* Married *Dermot's* Daughter, and according to Compact, succeeded him in his Kingdom.

A little after the Descent of these Adventurers, King *Henry II.* himself went into *Ireland* with an Army, in *November 1172.* and finding that his Subjects of *England* had made a very good hand of their Expedition, he obtained from Earl *Richard Strongbow* a Surrender of *Dublin*, with the Cantreds adjoining, and all the Martime Towns and Castles. But *Strongbow* and his Heirs were to Enjoy the Residue of *Dermot's* Principality.

King Henry II. Landed at *Waterford* from *Milford* in *Pembrookeshire*, and (staying there some few days, says *Giraldus Cambrensis*) *Rex Cortagiensis Dormitius advenit ei, & tam Subjectionis vinculo quam fidelitatis Sacramento Regi Anglorum se sponte submitit.* He freely swore Fealty and Subjection to the King of England.

From thence he went to *Lismore*, and thence to *Cashel*, where *Dunaldus* King of *Lymerick*, se quoque fidelem Regi exhibuit. The like did all the Nobility and Princes in the South of Ireland.

Afterwards he marched to *Dublin*, and there the Princes of the Adjacent Countries came to him, & sub Fidelitatis & Subjectionis obtentu a Rege Pacem impetrabant. Thus *Cambrensis* in his *Hibernia Expugnata*; and there he mentions the several Princes that came in, viz. *Macshagblin* King of *Ophaly*, *O Carrol* King of *Uriel* (now *Louth*) *O Rourk* King of *Mzath*, *Rotherick* *O Connor* King of *Connaught*,
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and

and Monarch as it were of the whole Island with diverse others, *qui firmissimis fidelitatis & subjectionis vinculis Domino Regi innodarunt & in singulari Rotherico Conactiæ Principe tanquam Insulæ Monarcha, subditi redduntur universi, nec alicujus fere in Insula, vel nominis vel ominis erat qui Regiæ Majestati & Debitam Domino Reverentiam, non exhiberet.*

The same Relation we have from *Roger Hoveden* (*Annal. Pars poster. fol. 301.*) About the Kalends of November 1172. (saith he) King *Henry II.* of *England*, took Shipping for *Ireland* at *Milford*, and Landed at *Waterford*, & ibi venerunt ad eum Rex *Corcagiensis*, Rex de *Lymerrick*, Rex de *Oxenie*, Rex *Midia*, & fere omnes *Hiberniæ Potentes*, And a little afterwards in the same place speaking of King *Henry* the Second's being at *Waterford*, ibidem venerunt ad Regem *Angliæ* omnes *Archiepiscopi*, *Episcopi* & *Abbates totius Hiberniæ*, & receperunt eum in Regem & Dominum *Hiberniæ* jurantes ei & heredibus

dibus suis Fidelitatem & Regnandi super eos Potestatem in perpetuum & inde Dederunt ei Chartas suas. Exemplo autem Clericorum prædicti Reges & Principes Hiberniæ receperunt simili modo Henricum Regem Angliæ in Dominum & Regem Hiberniæ, & sui devenerunt, & ei & Heredibus suis Fidelitatem contra omnes Juraverunt.

Matthew Paris likewise in his History speaking of King Henry II. being in Ireland, saith, Archiepiscopi & Episcopi ipsum in Regem & Dominum receperunt, & ei Fidelitatem & Homagium Juraverunt.

John Brampton Abbot of Fornal in his *Historia Fornalensi*, pag. 1070. speaking of Hen. II. hath these words, *Recepit ab unoquoque Archiepiscopo & Episcopo Hiberniæ Literas cum Sigillis suis in modum Chartæ pendentibus, Regnum Hiberniæ sibi & Hæredibus suis Confirmantes, & Testimonium perhibentes ipsos in Hibernia eum & Herædes suos sibi in Reges & Dominos in perpetuum Constituisse.* All the Archbishops, Bish-

ops, and Abbots of *Ireland* came to the King of *England*, and received him for King and Lord of *Ireland*, swearing Fealty to him and his Heirs forever. The Kings also and Princes of *Ireland*, did in like manner receive *Henry* King of *England*, for Lord of *Ireland*, and became his Men, and did him Homage, and swore Fealty to him and his Heirs against all Men. And he received Letters from them with their Seals pendent in manner of Charters, confirming the Kingdom of *Ireland* to him and his Heirs ; and Testifying, that they in *Ireland* had Ordain'd him and his Heirs to be their King and Lord of *Ireland* for ever. After which, he return'd into *England* in *April* following, viz. *April* 1173.

I come now to Enquire into our Second Particular proposed, *Viz.* Whether *Ireland* might be properly said to be Conquer'd by King *Henry* the Second, or by any other Prince in any succeeding Rebellion. And here we are to understand by *Conquest* an *Acquisition*

*sition of a Kingdom by Force of Arms, to which Force likewise has been opposed, if we are to understand Conquest in any other sense, I see not of what Use it can be made against Irelands being a Free Country. I know Conquestus, signifies a Peaceable acquisition, as well as an Hostile Subjugating of an Enemy. Vid. Spelman's Glos. And in this sense William the First is call'd the Conqueror, and many of our Kings have used the Epocha post Conquestum. And so likewise Henry the Second stiled himself Conquestor & Dominus Hiberniæ; but that His Conquest was no violent Subjugation of this Kingdom, is manifest from what foregoes: For here we have an Intire and Voluntary Submission of all the Ecclesiastical and Civil States of Ireland to King Henry II. without the least Hostile Stroke on any side; We hear not in any of the Chronicles of any Violence on either Parts, all was Transacted with the greatest Quiet, Tranquillity, and Freedom, imaginable, I doubt not
but*

but the Barbarous People of the Island at that time were struck with Fear and Terror of King *Henry II's* Powerfull Force which he brought with him ; but still their Easie and Voluntary Submissions Exempts them from the Consequents of an *Hostile Conquest*, whatever they are ; where there is no Opposition, *such a Conquest* can take no place.

I have before taken Notice of *Henry the II's* using the Stile of *Conquestor Hiberniæ* ; I presume no Argument can be drawn from hence for *Ireland's* being a Conquer'd Country ; for we find that many of the Kings of *England* have used the *Ara of Post Conquestum* ; *Edward the third* was the first that used it in *England*, and we frequently meet with *Henricus post Conquestum Quartus*, &c. as taking the *Norman Invasion of William the First*, for a *Conquest*. But I believe the People of *England* would take it very ill to be thought a *Conquer'd Nation*, in the
sense

sense that some impose it on *Ireland*: And yet we find the same Reason in one Case, as in t'other, if the Argument from the King's Stile of *Conquestor* prevail. Nay, *England* may be said much more properly to be *Conquer'd* by *William* the First, than *Ireland* by *Henry* the Second: For we all know with what Violence and Opposition from *Harrold, K.* *William* obtain'd the Kingdom, after a Bloody Battel nigh *Hastings*. Where as *Henry* the Second receiv'd not the least Opposition in *Ireland*, all came in Peaceably, and had large Concessions made them of the like Laws and Liberties with the People of *England*, which they gladly Accepted, as we shall see hereafter. But I am fully satisfy'd, that neither King *William* the First, in his Acquisition of *England*, nor *Henry* II. in his Acquest of *Ireland*, obtain'd the least Title to what some would give to *Conquerours*. Tho' for my own part, were they *Conquerours* in a sense never

never so strict, I should enlarge their Prerogative very little or nothing thereby, as shall appear more fully in the Sequel of this Discourse.

Another Argument for *Henry the Second's Hostile Conquest of Ireland* is taken from the Opposition which the Natives of *Ireland* gave to the first Adventurers, *Fitz Stephens*, *Fitzgerald*, and *Earl Strongbow*, and the Battles they fought in assisting *Mamorogh Prince of Leinster*, in the Recovery of his Principality.

'Tis certain there were some Conflicts between them and the *Irish* in which the Latter were constantly beaten; but certainly the Conquests obtain'd by those Adventurers, who came over only by the King's *License* and *Permission*, and not at all by his particular Command (as is manifest from the words of the Letters Patents of License recited by *Giraldus Cambrensis*, *Hib. Expug.* Pag 760. Edit. *Francof.* 1603. *Angl. Norm. Hiber. Camd*) can never be call'd
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the Conquest of *Henry the Second* especially considering that *Henry the Second* himself does not appear to have any Design of Coming into *Ireland*, or Obtaining the Dominion thereof, when he gave to his Subjects of *England* this License of Assisting *Mac-Morrogh*. But I conceive rather the Contrary appears, by the Stipulations between *Mac-Morrogh* and the Adventurers, and especially between him and *Srongbow*, who was to succeed him in his Principality.

From what foregoes, I presume it Appears that *Ireland* cannot properly be said *so to be Conquer'd* by *Henry the Second*, as to give the Parliament of *England* any Jurisdiction over us; it will much more easily Appear, that the *English Victories* in any succeeding *Rebellions* in that Kingdom, give no Pretence to a Conquest: If every Suppression of a Rebellion may be call'd a Conquest, I know not what Country will be excepted. The *Rebellions* in *England*

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have been frequent: in the Contests between the Houses of *York* and *Lancaster* one side or other must needs be *Rebellious*. I am sure the Commotions in *King Charles the First's* time, are stiled so by most Historians. This Pretence therefore of *Conquest* from *Rebellions*, has so little Colour in it, that I shall not insist longer on it: I know *Conquest* is an hateful word to *English* Ears, and we have lately seen a Book undergo a severe Censure, for offering to broach the *Doctrine of Conquest* in the *Free Kingdom of England*.

But, to take off all Pretence from this Title by *Conquest*, I come in the third Place to enquire, *What Title Conquest gives by the Law of Nature and Reason*.

And in this particular I conceive, that if the Aggressor or Insulter invades a Nation *Unjustly*, he can never thereby have a Right over the Conquered: This I suppose will be readily granted by all men: If a Vil-
lan

lain with a Pistol at my Breast, makes me convey my Estate to him, no one will say that this gives him any Right And yet just such a Title as this has an *Unjust* Conqueror, who with a Sword at my Throat forces me into Submission; that is, forces me to part with my *Natural Estate*, and Birth right, of being govern'd only by Laws to which I give my *Consent*, and not by his Will, or the Will of any other.

Let us then suppose a *Just* Invader, one that has *Right* on his side to Attack a Nation in an Hostile manner and that those who oppose him are in the *Wrong*: Let us then see what Power he gets, and over whom.

First, 'Tis plain he gets by his Conquest no Power over those who *Conquered with him*: they that fought on his side, whether as privat Soldiers or Commanders, cannot suffer by the Conquest, but must at least be as much Freemen, as they were before: If any lost their Freedom by

the *Norman Conquest*, (supposing King *William* the First had *Right* to Invade *England*) it was only the *Saxons* and *Britains*, and not the *Normans* that Conquered with him. In like manner supposing *Hen. II.* had *Right* to Invade this Island, and that he had been opposed therein by the Inhabitants, it was only the *Antient Race* of the *Irish*, that could suffer by this Subjugation; the *English* and *Britains*, that came over and Conquered with him, retain'd all the Freedoms and Immunities of *Free-born* Subjects; they nor their Descendants could not in reason lose these, for being Successful and Victorious; for so, the state of both *Conquerours* and *Conquered* shall be equally *Slavish*. Now 'tis manifest that the great Body of the present People of *Ireland*, are the Progeny of the *English* and *Britains*, that from time to time have come over into this Kingdom; and there remains but a meer handful of the *Antient Irish*

Irish at this day; I may say, not one in a thousand; So that if I, or any body else, claim the like Freedoms with the Natural Born Subjects of *England*, as being Descended from them, it will be impossible to prove the contrary. I conclude therefore, That a *Just Conquerour* gets no Power, but only over those who have *Actually Assisted* in that *Unjust Force* that is used against him.

And as those that joyned with the Conquerour in a *Just Invasion*, have lost no Right by the Conquest; so neither have those of the Country who *Oppos'd him not*: This seems so reasonable at first Proposal, that it wants little Proof. All that gives Title in a *Just Conquest*, is the *Opposers* using *Brutal Force*, and quitting the Law of Reason, and using the Law of Violence; whereby the Conquerour is entitled to use him as a *Beast*; that is Kill him, or Enslave him.

Secondly, Let us consider what Power that is, which a *Rightful Conquerour*

querour has over the Subdued *Opposers*. And this we shall find extends little farther than over the *Lives* of the *Conquer'd*; I say, little farther than over their *Lives*; for how far it extends to their *Estates*, and that it extends not at all to Deprive their *Posterity* of the *Freedom*s and *Immunities* to which all *Mankind* have a *Right*, I shall shew presently. That the *Just Conquerour* has an absolute Power over the *Lives* and *Liberties* of the *Conquer'd*, appears from hence, Because the *Conquer'd*, by putting themselves in a *State of War* by using an *Unjust Force*, have thereby forfeited their *Lives*. For quitting *Reason*, (which is the Rule between Man and Man) and using *Force* (which is the way of *Beasts*) they become liable to be destroy'd by him against whom they use *Force*, as any savage wild *Beast* that is Dangerous to his Being.

And this is the Case of *Rebels* in a settled Commonwealth, who forfeit their *Lives* on this Account. But as
for

for forfeiting their Estates, it depends on the Municipal Laws of the Kingdom. But we are now Enquiring what the Consequences will be between two Contesting Nations.

Which brings me to Consider how far a Just Conquerour has Power over the *Posterity* and *Estates* of the Conquer'd.

As to the *Posterity*, they not having Joyn'd or Assisted in the *Forcible Opposition* of the Conquerours *Just Arms*, can lose no Benefit thereby. 'Tis unreasonable any Man should be punish'd but for his own fault. Man being a free Agent, is only Answerable for his own Demerits; and as it would be highly Unjust to Hang up the Father for the Sons Offence, so the Converse is equally Unjust, that the Son should suffer any Inconvenience for the Fathers Crime. A Father hath not in himself a power over the Life or Liberty of his Child, so that no Act of his, can possibly forfeit it. And tho we find in the Municipal Laws
of

of particular Kingdoms, that the Son loses the *Fathers Estate* for the Rebellion or other Demerit of the *Father*, yet this is Consented and Agreed to, for the Publick Safety, and for deterring the Subjects from certain Enormous Crimes that would be highly prejudicial to the Common wealth. And to such Constitutions the Subjects are bound to submit, having consented to them tho' it may be unreasonable to put the like in Execution between *Nation and Nation* in the *State of Nature*: For in Settled Governments, Property in Estates is Regulated, Bounded and Determined by the Laws of the Common wealth, consented to by the People, so that in these, 'tis no Injustice for the Son to lose his Patrimony for his *Fathers Rebellion* or other Demerit.

If therefore the *Posterity* of the Conquer'd are not to suffer for the Unjust *Opposition* given to the Victor by their *Ancestors*, we shall find little place for any Power of the Conquer-

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ours over the *Estates* of the Subdued. The *Father* by his Miscarriages and Violence can forfeit but his own Life; he involves not his *Children* in his Guilt or Destruction, His *Goods*, which *Nature* (that willeth the Preservation of all *Mankind* as far as possible) hath made to belong to his *Children* to sustain them, do still continue to belong to his *Children*. 'Tis true Indeed, it usually happens that *Damage* attends unjust Force; and as far as the *Repair* of this *Damage* requires it; so far the Rightful Conqueror may Invade the *Goods* and *Estate* of the Conquered; but when this *Damage* is made up his Title to the *Goods* ceases, and the Residue belongs to the *Wife* and *Children* of the Subdued.

It may seem a strange Doctrine; that any one should have a Power over the *Life* of another Man, and not over his *Estate*; but this we find every day, for tho' I may *Kill* a Thief that sets on me in the High-way, yet I may not take away his *Money*; for 'tis

the *Brutal Force* the Aggressor has used, that gives his Adversary a Right to take away his *Life*, as a noxious Creature. But 'tis only *Damage* sustain'd, that gives Title to another Mans *Goods*.

It must be confessed, that the Practice of the World is otherwise, and we commonly see the Conqueror (whether *Just* or *Unjust*) by the Force he has over the Conquer'd, compels them with a Sword at their Breast to stoop to his Conditions, and submit to such a Government as he pleases to Afford them. But we Enquire not now, what is the *Practice*, but what *Right* there is to do so. If it be said the Conquer'd submit by their own *Consent*; Then this allows *Consent* necessary to give the Conquerour a Title to Rule over them. But then we may Enquire whether Promises Extorted by *Force* without *Right*, can be thought *Consent*, and how far they are *Obligatory*; And I humbly conceive they *Bind not at all*; He that *Forces* my Horse from me, ought presently to *Restore* him, and I have

have still a *Right* to retake him: So he that has *forced* a Promise from me, ought presently to *Restore* it, that is, quit me of the *Obligation* of it, or I may chuse whether I will perform it or not. For the *Law of Nature* obliges us only by the *Rules* she prescribes, and therefore cannot oblige me by the *Violation* of her Rules; such is the Extorting any thing from me by *Force*.

From what has been said, I presume it pretty clearly appears that an *Unjust* Conquest gives *no Title* at all; That a *Just* Conquest gives power only over the *Lives* and *Liberties* of the *Actual* *Opposers*, but not over their *Posterity* or *Estates*, otherwise than as before is mentioned; and not at all over those that did not concur in the Opposition.

They that desire a more full Disquisition of this Matter: may find it at large in an Incomparable *Treatise* concerning the *True Original Extent and End of Civil Government*, Chap. 16. This Discourse is said to be written by my excellent Friend, JOHN

LOCKE

LOCKE Esq; Whether it be so or not, I know not; this I am sure, whoever is the Author, the Greatest Genius in *Christendom* need not disown it.

But granting that all we have said in this Matter is Wrong, and granting that a Conquerour, whether *Just* or *Unjust*, obtains an *Absolute* Arbitrary *Dominion* over the Persons, Estates, Lives, Liberties and Fortunes of all those whom he finds in the Nation, their Wives, Posterity, &c. so as to make perpetual Slaves of them and their Generations to come; let us next Enquire whether *Concessions* granted by such a Victorious *Hero*, do not bound the Exorbitancy of his Power, and whether he be not Obligated strictly to Observe these Grants.

And here I believe, no Man of Common Sense or Justice, will Deny it; None that has ever Consider'd the Law of Nature and Nations, can possibly hesitate on this matter; the very Proposing it, strikes the Sense and Common Notions of all Men so forcibly

cibly, that it needs no farther proof. I shall therefore insist no longer on it but hasten to consider how far this is the Case of *Ireland*: And that brings me naturally to the fourth Particular propos'd *viz.* To shew by Precedents, Records, and History, what Concessions, and Grants have been made from time to time to the People of *Ireland*, & by what steps the Laws of *England* came to be introduced into this Kingdom.

We are told by *Matth. Paris*, Historiographer to *Hen. III.* that *Henry* the Second, a little before he left *Ireland*, in a Publick Assembly and Council of the *Irish* at *Lismore*, did cause the *Irish* to Receive, and Swear to be Govern'd by the Laws of *England*: *Lex Henricus* (saith he) *antequam ex Hibernia Rediret apud Lismore Concilium Congregavit, ubi Leges Angliæ sunt, ab omnibus gratanter receptæ, & Juratoria cautione præstita Confirmatæ, Vid. Math. Paris, ad An. 1172. Vit. H. 2.*

And not only thus, but if we may give Credit to *Sir Edward Cook*, in the
And

4th. Inst. Cap. 1. and 76. and to the Inscription to the *Irish Modus Tenendi Parliamentum*, it will clearly Appear, that *Henry* the second did not only settle the Laws of *England* in *Ireland*, and the Jurisdiction Ecclesiastical there, by the *Voluntary Acceptance* and *Allowance* of the Nobility and Clergy but did likewise Allow them the Freedom of *Holding of Parliaments* in *Ireland*, as a separate and distinct Kingdom from *England*; and did then send them a *Modus* to Direct them how to Hold their Parliaments there. The Title of which *Modus* runs thus:

“*Henricus Rex Angliæ Conquestor*
 “*⁊ Dominus Hiberniæ, &c.. Mittit*
 “*in formam Archiepiscopis, Episcopis*
 “*Abbatibus, Prioribus Comitibus Baro-*
 “*nibus, Justiciariis, Vicecomitibus, Majo-*
 “*bus, Præpositis, Ministris ⁊ omnibus*
 “*Fidelibus suis Terræ Hiberniæ Te-*
 “*nendi Parliamentum.*”

“*In primis Summonitio Parliamenti*
 “*præcedere debet per Quadraginta Dies*
 “*And*

And so forth.

This *Modus* is said to have been sent into *Ireland* by *Hen. II.* for a Direction to Hold their Parliaments there. And the sence of it agrees for the most part with the *Modus Tenendi Parl.* in *England*, said to have been Allowed by *William the Conqueror*; when he obtained that Kingdom; where 'tis alter'd, 'tis only to fit it the better for the Kingdom of *Ireland*.

I know very well the Antiquity of this *Modus*, so said to be transmitted for *Ireland*, by *Hen. II.* is questioned by some learned Antiquaries, particularly by *Mr. Selden* and *Mr. Pryn*, who deny also the English *Modus* as well as this. But on the other hand, my Lord chief Justice *Cook*, in the 4th Instit. pag. 12. and 349. does strenuously assert them both. And the late Reverend and Learned *Dr. Dopping* Bishop of *Meath*, has published the *Irish Modus* with a Vindication of its Antiquity and Authority in the Preface.

there

There seems to me but two Objections of any Moment raised by Mr. Pryn against these, *Modi*. The one relates both to the *English* and *Irish Modus*; the other chiefly strikes at the *Irish*. He says the Name *Parliament*, so often found in these *Modi*, was not a Name for the great Council of *England* known so early as these *Modi* pretend to. I confess I am not prepared to disprove this Antiquary in this Particular: But to me it seems reasonable enough to Imagine that the Name *Parliament*, came in with *William the Conqueror*: 'Tis a Word perfectly French, and I see no reason to doubt it's coming in with the *Normans*. The other Objection affects our *Irish Modus*, for he tells us, that *Sheriffs* were not establish'd in *Ireland*, in *Henry II's* time, when this *Modus* was pretended to be sent hither, yet we find the word *Vicecomes* therein. To this I can only Answer. That *Henry II.* intending to Establish in *Ireland*

the English form of Government, as the first, and Chief step thereto, he sent them Directions for holding of Parliaments, Designing afterwards by Degrees and in due time to settle the other Constitutions, agreeable to the Model of *England*. If therefore *England* had then *Sheriffs*, we need not wonder to find them named in the *Irish Modus*, tho they were not as yet established amongst us, for they were designed to be appointed soon after, and before the *Modus* could be put regularly in Execution; and accordingly we find them established in some Counties of *Ireland* in King *John's* time.

This *Irish Modus* is said to have been in the Custody of Sir *Christopher Preston* of *Clane* in *Ireland*, An. 6. Hen. 4. & by Sir *John Talbot* Lord Lieutenant of *Ireland*, under King *Henry 4.* It was Exemplified by *Inspeximus* under the great Seal of *Ireland*, and the Exemplification was sometime in the hands of Mr. *Hackwel* of *Lincolns Inn*, and by him was Communicated to Mr.

Selden. The Tenor of which Exemplification runs thus.

Henricus Dei Gratia Rex Angliæ & Franciæ, & Dominus Hiberniæ, omnibus ad quos presentes Literæ pervenerint salutem. Inspeximus Tenorem Diversorum Articulorum in quodam Rotulo PergameneoScriptorum cum Christophoro Preston Milite Tempore Arrestationis suæ apud Villam de Clare, per Deputatum Dilecti & Fidelis nostri Johannes Talbot de Halomshire Chivaler locum nostrum Tenentis, Terræ nostræ Hiberniæ, nuper factæ inventorum ac coram nobis & Concilio nostro in eadem terræ nostra apud Villam de Trim. Nono die Januarii, ultimo præteriti in hæc verba.

‘Modus Tenendi Parliamenta Henricus Rex Angliæ, Conquestor & Dominus Hiberniæ, Mittit hanc formam Archiepiscopis, &c. and so as before, “ Et omnibus Fidelibus suis Terræ Hiberniæ Tenendi Parliamentum Imprimis Summonitio, &c. and then follows the Modus, agreeable in most things with that of England, only fitted to Ireland

Ireland. Then the Exemplification concludes.

Nos autem tenores Articulorum prædictorum de Assensu præfati Locum tenentis & Concilii prædicti tenore præsentium duximus Exemplificandum & has Literas nostras fieri fecimus Patentes. Teste Præfato Locum nostrum tenente apud Trim. 12. die Januarii Anno Regni nostri sexto.

Per ipsum Locum tenentem & Concilium.

Now we can hardly think it credible (says the Bishop of *Meath*) that an *Exemplification* could have been made so solemnly of it by King *Henry* the IV. and that it should refer to a *Modus* transmitted into *Ireland* by King *Henry* II. and Affirm that it was produced before the Lord Lieutenant and Council at *Trym*, if no such thing had been Done: This were to call in question the Truth of all former Records and Transactions, and make the Exemplification contain an Egregious Falshood in the body of it.

The

The Reverend Bishop of *Meath*, in his fore-cited Preface does believe that he had obtain'd the very Original Record, said by my Lord *Cook* to have been in the Hands of Sir *Christopher Prestoun*: It came to that Learned Prelates Hands amongst other Papers and Manuscripts of Sir *William Domvile*, late Attorney General in this Kingdom, who in his Life-time, upon an occasional Discourse with the Bishop concerning It, told him that that this Record was bestow'd on him (Sir *William Domvile*) by Sir *James Cusse*, late Deputy Vice-Treasurer of *Ireland*, that Sir *James* found it among the Papers of Sir *Francis Aungier*, Master of the Rolls in this Kingdom; and the present Earl of *Longfoord* (Grandson to the said Sir *Francis Aungier*) told the Bishop, that his said Grandfather had it out of the Treasury of *Waterfoord*.

Whilest I write this, I have this very Record now before me, from the Hands of the said Bishop of *Meaths* Son
my

my Nephew, *Samuel Dopping* ; and I must confess it has a Venerable Antient Appearance, but whether it be the True Original Record, I leave on the Arguments produced for its Credit by the said Bishop.

This I am sure of, that whether this be the very Record Transmitted hither by King *Henry* the Second, or not ; yet 'tis most certain from the Unanimous Concessions of all the fore-mentioned Antiquaries, *Cook, Selden, Pryn, &c.* That we have had Parliaments in *Ireland* very soon after the Invasion of *Henry II.* For *Pryn* confesses that King *Henry II.* after his Conquest of *Ireland*, and the General Voluntary Submission, Homages, & Fealties of most of the *Irish* Kings, Prelates, Nobles, Cities, and People, to him, as to their Sovereign Lord and King *Anno 1170*, (it should be *1172*) held therein a General Council of the Clergy at *Cashal*, wherein he Rectify'd many Abuses in the Church, and establish'd sundry Ecclesiastical Laws, agreeable to those
in

in the Church of *England*; *Ecclesiæ illius statum ad Anglicanæ Ecclesiæ formam, Redigere Modis omnibus elaborando*; To which the *Irish* Clergy promis'd Conformity, and to observe them for time to come, as *Giraldus Cambrensis*, who was then in *Ireland*, and other Historians relate: *Et ut in singulis Observatio similis Regnum Colligaret utrumque* (that is *England* and *Ireland*) *passim omnes unanimi voluntate communi Assensu, pari, desiderio Regis imperio se subjiunt, omnibus igitur hoc modo Consummatis, in Concilio habito apud Lismore Leges, Angliæ ab omnibus sunt, gratanter receptæ, & juratoria cautione præstita Confirmatæ*, says *Math. Paris*,

Can any Concession in the World be more plain and free, than this? We have heard of late much Talk in *England* of an *Original Compact* between the King and People of *England*; I am sure 'tis not possible to shew a more fair *Original Compact* between a King and People, than this between *Henry the Second*, and the People of *Ire-*

Ireland, *That they should Enjoy the like Liberties and Immunities, and be Govern'd by the same Mild Laws, both Civil and Ecclesiastical, as the People of England:*

From all which, it is manifest, that there were no Laws imposed on the People of *Ireland*, by any Authority of the Parliament of *England*, nor any Laws introduced into that Kingdom by *Henry the Second*, but by the Consent and Allowance of the People of *Ireland*: For both the Civil and Ecclesiastical State were settled there *Regiæ sublimitatis Autoritate*, solely by the King's Authority, and their own good Wills, as the *Irish Statute*, 11 *Eliz. c. 1.* Expresses it. And not only the Laws of *England*, but the manner of *Holding Parliaments* in *Ireland* to make Laws of their own (which is the *Foundation and Bulwark* of the Peoples *Liberties and Properties*) was Directed and Established there by *Henry the Second*, as if he were Resolved that no other Person or Persons

sons should be the *Founders* of the Government of *Ireland*, but himself and the *Consent* of the People, who submitted themselves to him against all Persons whatsoever.

Let us now see by what further Degrees the Government of *Ireland* grew up conformable to that of *England*.

About the twenty third Year of *Henry* the Second, (which was within Five Years after his Return from *Ireland*) he created his younger Son *John*, King of *Ireland*, at a Parliament held at *Oxford*. Soon after *King John* being then about twelve Years of Age, came into *Ireland*, from *Milford* to *Waterford*, as his Father had formerly done. The *Irish Nobility* and Gentry immediately repaired to him; but being received by him and his Retinue with some Scorn and Derision by Reason of their long rude Beards, *quas more patrio grandes habebant & prolixas*, (says *Giraldus Cambrensis, Hib. Expug. Cap. 35.*) they took such Offence thereat, that they departed in much Discontent; which

was

was the occasion of the young Kings staying so short a time in *Ireland*, as he did this his first time of being here.

And here, before we proceed any farther, we shall observe, That by this Donation of the *Kingdom of Ireland* to *King John*, *Ireland* was most eminently set apart again, as a *Separate* and *Distinct Kingdom* by it self from the *Kingdom of England*; and did so continue, until the *Kingdom of England* Descended and came unto *King John*, after the Death of his Brother *Richard* the First, King of *England*, which was about Twenty two years after after his being made King of *Ireland*; during which space of Twenty two years, both whilst his Father *Henry* the Second, and his Brother *Richard* the First, were living and Reigning, *King John* made divers Grants and Charters to his Subjects of *Ireland*, which are yet in being in this Kingdom; wherein he styles himself *Dominus Hiberniæ*, (the constant Stile till *Henry* the Eighth's time

time) and in others, *Dominus Hiberniæ & Comes Meritoniciæ*. By which Charters both the City of *Dublin*, and divers other Corporations enjoy many Priviledges and Franchises to this day. But after the said Grant of the Kingdom of *Ireland* to king *John*, neither his Father *Henry II.* nor his Brother King *Richard I.* Kings of *England*, ever stiled themselves during their Lives, King or Lord of *Ireland*; for the Dominion and Regality of *Ireland* was wholly and separately vested in K. *John*, being absolutely Granted unto him without any Reservation. And he being Created King in the Parliament at *Oxford*, under the Stile and Title of Lord of *Ireland*, Enjoy'd all manner of Kingly Jurisdiction, Preheminence, and Authority Royal, belonging unto the Imperial State and Majesty of a King, as are the expresse words of the *Irish* Statute 33 Hen. VIII. c. 1. by which Statute the Stile of *Dominus* was changed to that of *Rex Hiberniæ*.

Let

Let us then suppose that *Richard the First*, King *John's* Elder Brother, had not died without Issue, but that his Progeny had sat on the Throne of *England*, in a Continued Succession to this Day: Let us suppose likewise, the same of King *John's* Progeny, in relation to the Throne of *Ireland*; where then had been the Subordination of *Ireland* to the Parliament, or even to the King of *England*? Certainly no such thing could have been then pretended: Therefore if any such Subordination there be, it must arise from something that followed after the Descent of *England*, to King *John* for by that Descent *England*; might as properly be Subordinate to *Ireland*, as the converse; *Ireland* being vested in the Royal Person of King *John*, Two and Twenty years before his Accession to the Crown of *England*, and being a more Ancient Kingdom than the Kingdom of *England*. As the English Orators in the Council of Constance, an. 1417 confess'd and alledg-

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alleged, as an Argument in the Contest between *Henry the Fifth's* Legates, and those of *Charles the Sixth King of France*, for Precedence: *Satis Constat* (say they) *secundum Albertum Magnum & Bartholomeum de Proprietatibus Rerum*, quod toto Mundo in tres partes Diviso, scilicet in Europam, Asiam & Africam (for America was not then Discovered) Europa in quatuor Dividitur Regna scilicet, Primum Romanum, Secundum Constantinopolitanum, Tertium Regnum Hiberniæ (quod jam translatum est in Anglos) & Quartum Regnum Hispaniæ. Ex quo patet, quod Rex Angliæ & Regnum suum sunt de Eminentioribus Antiquioribus Regibus & Regnis totius Europæ. The Antiquity and Precedence of the King of England, was allowed him wholly on the Account of his Kingdom of Ireland.

Perhaps it will be said, That this Subordination of the Kingdom of Ireland to the Kingdom of England, proceeds from Ireland's being Annex'd

nex'd to, and as it were united with the Imperial Crown of *England*, by several Acts of Parliament both in *England* and *Ireland*, since King *John's* time. But how far this Operates, I shall Enquire more fully hereafter; I shall only at present Observe, that I conceive little more is Effected by these Statutes Than that *Ireland* shall not be *Alien'd* or *Separated* from the King of *England*, who cannot hereby dispose of it otherwise than in *Legal Succession* along with *England*; and that whoever is *King of England*, is *ipso facto King of Ireland*, & the Subjects of *Ireland* are oblig'd to Obey him as their Liege Lord.

To proceed therefore after both Crowns were united, on the Death of *Richard* the First without Issue, in the Royal Person of King *John*: He, about the Twelfth Year of his Reign of *England*, went again into *Ireland*, viz. the Twenty Eight day of June, 1210. and *Math. Paris* tells us pag. 220 *Cum Venisset ad Dublinensem Civitatem*

*tatem Occurrerunt ei ibidem plus quam
20 Reguli illius Regionis qui omnes Ti-
more maximo perterriti Homagium ei &
Fidelitatem fecerunt. Fecit quoque Rex
ibidem, Construere Leges & Consue-
tudes Anglicanas, ponens Vicecomites
aliosque Ministros, qui populum Regni
illius juxta Leges Anglicanas Judi-
carent.*

His Son King Henry the Third
came to the Crown the Nineteenth of
Octob. 1216. and in November follow-
ing he Granted to Ireland, a *Magna
Charta*, Dated at Bristol 12 November,
the First Year of his Reign. 'Tis Pre-
faced, *that for the Honour of God, and
Advancement of Holy Church, by the Ad-
vice of his Council of England, (whose
names are particularly recited)* He
makes the following Grant to Ireland;
And then goes on Exactly Agreeable
to the *Magna Charta* which he granted
to England; only in ours we have *Ci-
vitas Dublin*, and *Avenliffes*, instead
of *Civitas London*, and *Thamesis*, with
other Alterations of the like kind
where

where Needfull. But ours is Eight years older than that which he granted to *England*, it not being till the Ninth Year of his Reign, and ours is the First Year. This *Magna Charta of Ireland* Concludes thus *Quia vero sigillum nondam Habuimus, presentem Cartam Sigillis Venerabilis Patris nostri Domini Gaalt. Apost. Sedis Legati & Wilhelmi Mareschalli Comitis Rembrooke Rectoris nostri & Regni nostri fecimus Sigillari. Testibus omnibus prænominatis & aliis Multis Dat per Manas Prædictorum Domini Legati & Wilhelmi Mareschalli. Apud Bristol. Duodecimo die Novembris. Regni nostri Anno Primo.* An Antient Copy of this *Magna Charta of Ireland*, is to be found in the *Red Book* of the *Exchequer Dublin*.

In *February* following in the First Year likewise of his Reign, by Advice of all his Faithful Counsellors in *England*, to gratify the *Irish* (says *Pryn*) for their eminent Loyalty to his Father and Him, he granted them out of his *Special Grace*, that they and their

their Heirs for ever should enjoy the *Liberties* granted by his Father and Himself to the Realm of *England* which he Reduced into Writing, and sent Seal'd thither under the Seal of the Popes Legat, and W. Earl Marshal his Governour, because he had then no Seal of his own. This as I conceive Refers to the formention'd *Magna Charta Hiberniæ*. The Record as Recited by Mr. *Pryn*, here follows.

‘Rex Archiepiscopis, Episcopis,
 ‘Abbatibus, Comitibus, Baronibus,
 ‘Mililibus, & Libere Tenentibus, &
 ‘omnibus Fidelibus suis per Hiberniam
 ‘Constitutis, Salutem: Fidelitatem
 ‘vestram in Domino Commendantes
 ‘quam Domino Patri nostro semper
 ‘Exhibuistis & nobis estis diebus no-
 ‘stris Exhibituri: Volumus quod In-
 ‘signum Fidelitatis vestræ, tam præ-
 ‘claræ, tam Insignis Libertatibus Regno
 ‘nostro Angliæ a Patre nostro & no-
 ‘bis concessis de gratia nostra & Dono
 ‘in regni nostro Hiberniæ gadeatis
 vos & vestri Hæredes in perpetuum.

Re-

' Quas distincte in Scriptum Reductis
 ' de Communi Consilio omnium Fide-
 ' lium Nostorum Vobis Mittimus
 ' Signatas Sigillis Domini nostri G.
 ' Apostolicæ Sedis Legati & Fidelis
 ' Nostri Com. W. Maresc. Rectoris
 ' nostri & Regni Nostri, quia sigill-
 ' um nondum habuimus, easdem pro-
 ' cessu temporis de Majori Consilio,
 ' proprio sigillo signaturi.

Teste Apud Glouc. 6 Februar.

Here we have a free Grant of all the
Liberties of England to the *People of*
Ireland. But we Know the *Liberties of*
English Men are founded on that *Uni-*
versal Law of Nature, that ought to
 prevail throughout the whole World,
 of being Govern'd only by such Laws to
 which they give their own Consent, by
 their Representatives in Parliament.

And here, before I proceed farther,
 I shall take notice, that in the late
 rais'd Contraversie, Whether the House
 of Commons were an Essential part of
 Parliament, before the 49 Year of Hen-
 ry the Third; The Learned Mr. Pe-

(50)
the keeper of the Records in the Tower,
in his Book on that Subject, pag. 71
deduces his 9th Argument, from the
Comparison of the antient *Geneſſale*
Concilium or Parliament of Ireland, in-
ſtanced *An. 38. Hen. III.* with the
Parliament in England, wherein the
Citizens and Burgeſſes were; which
was Eleven years before the pretend-
ed beginning of the Commons in
England.

For thus we find it in that Author.

“ As great a Right and Priviledge
“ ſurely was and ought to be allow’d
“ to the *English* Subjects, as to the
“ *Irish*, before the 49th of *Henry III.*
“ And if that be admitted, and that
“ their (the *Irish Commune Concili-*
“ *um*, or Parliament, had its plain Plat-
“ Form from ours (the *English*) as I think
“ will not be Deny’d by any that have
“ conſider’d the History and Records
“ touching that Land *Ireland*) we
“ ſhall find the enſuing Records,
“ *Anno 38 Hen. III.* clearly evince
“ that the Citizens and Burgeſſes were
“ then

" then a part of their (the *Irish*) Great
 " Council or Parliament.

" That King being in *partibus Trans-*
 " *marinis*, and the Queen being left
 " Regent, she sends Writs (or a Let-
 " ter) in the King's Name, directed
 " *Archiepiscopis, Episcopis, Abbatibus,*
 " *Prioribus, Comitibus, Baronibus, Mi-*
 " *litibus, Liberis Hominibus, Civibus,*
 " *& Burgensibus, Terræ suæ Hiberniæ,*
 " telling them that, *Mittimus Fratrem*
 " *Nicholaum de Sancto Neoto, Fratrem Hos-*
 " *pitii Sancti Joannis Jerusalem in Anglia*
 " *ad partes Hiberniæ ad exponendum*
 " *vobis* (together with J. Fitz-Geoffe-
 " ry the Kings Justice) the State o^r this
 " Land of *Vascony*, endanger'd by the
 " Hostile Invasion of the King of Ca-
 " stile, *qui nullo jure sed potentia sua*
 " *Confisus Terram nostram Vasconiæ per*
 " *ipsum Fortitudinem, a manibus nostris*
 " *Auferre & a Domino Regni Angliæ*
 " *segregare, Proponit.* And therefore
 " *universitatem Vestram Quanta possu-*
 " *mus Affectione Rogantes quatenus nos*
 " *& jura nostra totaliter indefensa non*
 " *deserantes.*

“ *deserentes nobis in tanto periculo*
 “ *quantumcunque poteritis de Gente & Pe-*
 “ *cunia subveniat;* which would
 “ turn to their Everlasting Honour;
 “ concluding *His nostris Augustiis tati-*
 “ *ter Compatientes, quod nos & Hæredes*
 “ *nostri vobis & Hæredibus vestris su-*
 “ *mus non immerito Obligati. Teste Re-*
 “ *gina, & R. Comite Cornubiæ, apud*
 “ *Windefor, 17 Die Februar.*

Per Reginam.

Thus far Mr. Peryt.

Here we have a Letter from the
 Queen Regent to the Parliament in
 Ireland, in a humble manner beseech-
 ing them for an Aid of *Men and Money*
 against the King of Castiles Hostile In-
 vasion of *Gascony*, from whence we may
 perceive that in those days, no more
 than at present, *Men and Money* could
 not be rais'd but by *Consent of Parlia-*
ment. I have been the more particular
 in Transcribing this Passage out of
 Mr. Peryt, to shew that we have as
 Ancient and Express an Authority for
 our present Constitution of Parlia-
 ments

ments in *Ireland*, as can be shewn in *England*. And I believe it will not be thought *Advisable* in these latter Days, to break in upon *Old Settled Constitutions*: No one knows how fatal the Consequents of that may be. To Return therefore where we digress'd. *Henry III*, about the Twelfth Year of his Reign, did specially Impower *Richard de Burgh* then *Justice of Ireland*, at a certain Day and Place, to Summon all the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Freeholders, and Sheriffs of each County, and before them to cause to be Read the Charter of his Father King *John*, whereunto his Seal was Appendant, whereby he had Granted unto them the *Laws and Customs of England*, and unto which They Swore Obedience: And that he should cause the same Laws to be Observ'd and Proclaim'd in the several Counties of *Ireland*, that so none presum'd to do Contrary to the Kings Command. The Record I have taken out of *Mr. Pryn*, in these words,

‘ Rex

Rex Dilecto & Fideli suo Richardo
 de Burgo Justic. suo Hibern. Salu-
 tem. Mandamus vobis firmiter præ-
 cipientes quatenus certo die & loco
 faciatis venire coram vobis Archie-
 piscopos, Episcopos, Abbates Prio-
 res Comites & Barones Milites &
 libere tenentes & Ballivos singulo-
 rum Comitatum & coram eis pub-
 lica legi faciatis Chartam domini J.
 Regis patris nostri cui sigillum suum
 appensum est quam fieri fecit & ju-
 rari a Magnatibus Hibern. de legi-
 bus & consuetudinis Angliæ obser-
 vandis in Hibernia, & præcipiatis
 eis ex parte nostra quod leges illas &
 consuetudines in Charta prædicta
 contentas de cætero firmiter teneant
 & observent, & hoc idem per singu-
 los Comitatus Hiberniæ clamari fa-
 ciatis & teneri prohibentes firmiter
 ex parte nostra & super foris factu-
 ram nostram ne quis contra hoc
 Mandatum nostrum venire præsumat,
 &c. *Teste Meipso apud Westm.* 8 die
Maii Ann. Reg. nostri 12.

By what foregoes I presume it plainly appears, that by three several Establishments under the three first Kings of *Ireland* of the *Norman Race* the *Laws* and *Liberties* of the *People of England*, were granted to the *People of Ireland*. And that neither of these three Kings establish'd those *Laws* in *Ireland* by any power of the *Parliament of England*, but by the free *Consent*, *Allowance* and *Acceptance* of the *People of Ireland*.

Henry. II. First introduc'd the *Laws* of *England* into *Ireland*, in a *Publick* Assembly of the *Irish* at *Lismore*, and allowed them the freedom of *Parliaments* to be held in *Ireland*, as they were held in *England*.

King John at the request, and by the *Consent* of the *Irish* did appoint the *Laws* of *England* to be of Force in *Ireland*; and tho' he did not this till the *Twelfth* Year of his *Reign* of *England*, yet he did it not as *King* of *England*, but as *Lord* of *Ireland*; for the *Crown* of *England* came to *Him* by

Decent

Descent from his Brother *Richard*, who had no *Regal Power* in *Ireland*; and what his Brother had not, could not descend to him.

Henry the Third in the first Year of his Reign gave *Ireland* a *Magna Charta*; and in the Twelfth Year of his Reign did provide, That all the Laws of *England* should be observed in *Ireland*; and that the Charter granted to the *Irish* by his Father King *John* under his Seal, when he was in that Kingdom, should be kept inviolably.

And from the Days of these Three Kings, have *England* and *Ireland* been both Governed by the like Forms of Government under one and the same Supreme Head, *the King of England*; yet so, [as both Kingdoms remain'd Separate and Distinct in their several Jurisdictions under that One Head, as are the Kingdoms of *England* and *Scotland* at this day, without any Subordination of the One to the Other.

It were endless to mention all the Records and Precedents that might be
quoted

quoted for the Establishment of the Laws of *England in Ireland*; I shall therefore enter no farther into that Matter, but therein refer to Lord Chief Justice *Cook, Pryn, Reply, &c.*

If now we Enquire, *What were those Laws of England that became thus Established in Ireland?* Surely we must first reckon the Great Law of Parliaments, which *England* so justly Challenges, and all *Mankind* have a Right to. By the Law of Parliament, I mean that Law whereby all Laws receive their Sanction, *The Free Debates and Consent of the People, by themselves, or their Chosen Representatives.* That this was a main Branch of the *English Law* Established in this Kingdom, and the very Foundation of our Future Legislature, appears manifest from Parliaments being so early convok'd in *Ireland*, as the fore-mentioned *Precedents* express.

Mr. Pryn acknowledges one in *Hen. II's* time, (pag. 259. against the 4th Inst.) but makes a very false Conclusion,

sion, that there appears no Footsteps of a Parliament afterwards, till the third Year of *Edward* the Second, because the Acts of that Parliament are the first that are Printed in our *Irish* Statute-Book; For so we may argue the Parliaments of *England* to be of later Date than pretended, when we find the first Printed Acts in *Keeble* to be no older, than the 9th of *Hen. III.* Whereas 'tis most certain, that Parliaments have been held in *England* some Ages before that.

After this *Great Law of Parliaments*, we may reckon the *Common Law* of *England*, whether it relates to Regulating and Settling of *Property*, and Estates in Goods or Land, or to the *Judiciary* and *Executive* parts of the Law, and the Ministers and Process thereof, or to *Criminal* Cases. These surely were all Establish'd in this Country, by the three first Kings of *Ireland* of the *Norman* Race.

Let us now consider the state of the *Statute Laws* of *England* under these three Kings, and their Predecessors: For by the *Irish* Voluntary Submission to, and
Accept-

Acceptance of the Laws and Government of *England*, we must repute them to have submitted themselves to these likewise; till a Regular Legislature was Established amongst them, in pursuance of that Submission and Voluntary Acceptance.

And here we shall find, that in these times, *viz.* from the *Norman Conquest* to *Hen. III's* time *inclusive*, the Statute Laws of *England*, were very few and slender. 'Tis true, that before the 12th of *Hen: III.* We find amongst the *English* Historians frequent mention of the Laws of *Edward the Confessor*, *William the Conqueror*, *Hen: I.* *Hen: II.* *King John*, and *Hen: III.* All which are only *Charters* or several Grants of *Liber-ties* from the King; which nevertheless had the force of Acts of Parliament, and laid as great Obligations both upon Prince and People, as Acts of Parliament do at this Day: Whereof we may read several Proofs in the *Princes Case*, *Cook's* 8th. Report. But these were only so many *Confirmations*

of each other, and all of them *Sancti-
ons of the Common Laws and Liberties*
of the People of England, *ab Antiquo*
usitatae & comprobatae per totam Terram
& in quibus ipsi & eorum patres nati &
nutriti sunt. As the Words of the Ma-
nuscript Chronicle of *Litchfield* Ex-
press it.

The Laws of *Edward the Confessor*,
held in so great veneration in *Antient*
Times, & *per universum Regnum corrobo-*
ratae & confirmatae, prius inventae &
constitutae fuerunt tempore Regis Edgari
avi sui. Verum tamen post mortem ipsius
Regis Edgari, usque ad *Coronationem*
sancti Regis Edwardi (which was 67
Years) *praedictae Leges sopitae sunt &*
penitus intermissae. Sed postquam *Rex Ed-*
wardus in regno sublimatus fuit, *Consi-*
lio Baronum Angliae, *Legem illam sopitam*
excitavit, *excitam reparavit*, *repara-*
tam decoravit, *decoratam confirmavit*; &
confirmatae vocantur Lex Sancti Regis
Edwardi, Non quod ipse primus eam ad
invenisset; sed quod *reparavit*, *restituitque.*
As the said *Litchfield Chronicle* has it.

These

These Laws of *Edward the Confessor* were Transcribed by *Ingulphus* Abbot of *Croyland* under *William the Conqueror*, and are annexed to his History.

The Laws of *William the Conqueror* are but a Confirmation of the Laws of *Edward the Confessor*, with some small alterations, as the very letter of those themselves Express it. *Hoc quoque precipimus ut omnes habeant & teneant Leges Edwardi Regis in omnibus rebus adactis his quas constituimus ad utilitatem Anglorum.*

The Laws of *Hen: I.* which are in the *Red Book of the Exchequer*, in the Custody of the King's Remembrancer in *England*, are but a summary Confirmation both of the Laws of *Edward the Confessor*, and *William the first*, as the Charter it self expresseth it, *Lagam Regis Edwardi Vobis Reddo cum illis emendationibus quibus Pater meus emendavit Consilio Baronum Suorum.*

The Laws of *Hen: II.* call'd *Constitutions*

rationes Clarendoniæ, and the *Affize of Clarendon* in the 2d part of *Cook's Institut*: pag. 6. are all but Confirmations and Vindications of the Kings Just prerogative against the Usurpations of the Pope and Clergy: as we find at large in *Chron. Gervasii Doroborn.* P. 1387. Edit Lond: Ann. 1652.

The Laws of King John call'd the *Great Charter of King John*, Granted in the 17 Year of his Reign upon the Agreement made between him and his Barons at *Running Mead*, between *Staines* and *Windsor*, was but a Confirmation of the Laws of *Edward the Confessor*, and *Hen: the First*, as *Mat: Paris.* Relates it. *Anno Regis Johannis 17. Venientes ad Regem Magnates petierunt quasdam Libertates & Leges Regis Edwardi cum aliis Libertatibus sibi & Regno Angliæ & Ecclesiæ Anglicanæ concessis confirmari prout in Charta Regis Henry 1. ascriptæ continentur.* The same Historian gives us, also at large, both *Charta Libertatum* and
Char-

Charta de Foresta; which are not extant in the Rolls of those times, nor to be found in any, till the 28th of *Edward I.* And that but by *Inspeximus*.

The Laws of *Henry III.* contain'd in *Magna Charta*, and *Charta de Foresta*, both which are call'd *magna charta Libertatis Angliæ*, and were establish'd about the 9th year of *Henry III.* are for the most part but Declaratory of the common Municipal Laws of *England*, and that too no new Declaration thereof; for King *John* in the 17th year of his Reign had granted the like before, which was also call'd *Magna Charta*. And by the English Statute 25 *Ed.* Cap. 1. It is Enacted, That the *Great Charter* and the *Charter of the Forrest* be taken as the common Law of *England*.

But what foregoes, I conceive, it is very clear, that all the *Charters* and *Grants of Liberties* from *Edward the Confessor's* time down to the 9th of *Henry*,

Henry III. were but Confirmations one of another, and all of them Declarations, and Confirmations of the *Common Law* of *England*. And by the several establishments, which we have formerly mention'd, of the *Laws* of *England* to be of force in *Ireland*: First, in the 13th of *Henry II.* Secondly, in the 12th of *King John.* Thirdly, in the 12th of *Henry III.* All those *Laws* and *Customs* of *England*, which by those several Charters were declared and confirmed to be the *Laws* of *England*, were established to be of Force in *Ireland*. And thus *Ireland* came to be Govern'd by one and the same *Common Law* with *England*; and those *Laws* continue as part of the *Municipal* and *fundamental Laws* of both Kingdoms to this day.

It now remains that we enquire; how the *Statute Laws* and *Acts* of *Parliament* made in *England* since the 9th of *Henry III.* came to be of force in *Ireland*, and whether all or any of them

them, and which, are in force here and when and how they came to be so.

And the first precedent that occurs in our Books, of Acts of Parliament in *Ireland* particularly mentioning and confirming special Acts of Parliament in *England*, is found in a Marginal Note of Sir *Richard Boltoun's* formerly Lord Chief Baron of the *Exchequer* in *Ireland*; affixed in his Edition of the *Irish Statutes* to Stat. 10 *Henry 7. Chap. 22.* to this purport that in 13 *Edward II.* by Parliament in this Realm of *Ireland* the Statutes of *Marton* made the 20th of *Hen. II.* and the Statutes of *Marlbridge*, made the 52 of *Henry III.* The Statute of *Westminster* the first, made the 3d of *Edward the I.* the Statute of *Gloucester* made the 6th of *Edward I.* and the Statute of *Westminster* the Second, made the 13th of *Edward I.* were all confirmed in this Kingdom, and all other Statutes which were of force in *England*, were refer'd to be examin'd in the next Parliament; and so many as were then allow'd and published to stand like-

Wise, for Laws in this Kingdom. And in the 10th of Henry 4th. It was enacted in this Kingdom of Ireland, that the Statutes made in England should not be of force in this Kingdom, unless they were allowed and published in this Kingdom by Parliament. And the like Statute was made again in the 29th Henry 6th. These Statutes are not to be found in the Rolls nor any Parliament Roll of that time; but he (Sir Richard Bolton) had seen the same exemplified under the great Seal, and the Exemplification remaineth in the Treasury of the City of Waterford: Thus far the Note. If we consider the frequent troubles and Distractions in Ireland, we shall not wonder that these, and many other Rolls, and Records have been lost in this Kingdom: For from the 3d year of Edward 2d, which was Anno 1310: through the whole Reigns of Edward III. Richard II. Hen. IV. and Henry V. and so to the Seventh year of Henry 6th, An: 1428. which is above 118 years, there are not any

Par-

Parliament Rolls to be found, yet certain it is that diverse Parliaments were held in *Ireland* in those times. The same may be said from *Henry* the Second's coming into *Ireland* Anno 1172 to the third Year of *Edward* the Second, Anno 1310, about 138 years.

Perhaps it may be said, that if there were such Statutes of *Ireland* as the said Acts of the 10th of *Henry* the Fourth, and the 29th of *Henry* 6th, as they shew that the Parliaments of *Ireland* did think that English Acts of Parliament could not bind *Ireland*, yet they shew likewise, that even in those days the Parliaments of *England* did claim this Superiority; or else to what purpose were the saids Acts made unless in denial of that claim?

All which I hope may be readily granted without any prejudice to the right of the *Irish* Parliaments: There is nothing so common as to have one Man claim another Mans Right: And if bare pretence will give a Title no Man is secure: And it will be yet worse

worse if when another so pretends, and I insist on my Right, my just claim shall be turned to my prejudice, and to the Disparagment of my Title

We know very well that many of the Judges of our Four Courts have been from time to time sent us out of *England*; and some of them may easily be supposed to come over hither *prepos- sess'd* with an opinion of our Parliaments being subordinat to that of *England*. Or at least, some of them may be *scrupulous*, and desirous of full Security in this point; and on their account, and for their satisfaction, such Acts as aforesaid, may be devised, and Enacted in *Ireland*. But then, God forbid, that these Acts should afterwards be laid hold of to a clear other intent than what they were framed for; and instead of declaring and securing our Rights should give an handle of Contest, by shewing that our Rights have been question'd of ancient time;

In conclusion of all, If this *Superiority* of the Parliament of *England* hath been *doubted* a great while ago, so it has been as great a while agoe *Strenuously Opposed* and *Absolutely Denied* by the Parliaments of *Ireland*. And by the way, I shall take Notice, that from whencesoever this Ancient *Pretence* of *Ireland's Subordination*, proceeded in those days, it did not arise from the Parliament of *England*, it self: For we have not one single Instance of an *English Act* of Parliament *Expressly Claiming* this Right of Binding us: But we have several instances of *Irish Acts* of Parliament, *Expressly Denying* this *Subordination*, as appears by what foregoes.

Afterwards by a Statute made in *Ireland*, the 18th of *Hen. VI. Cap. 1.* All the Statutes made in *England* against the *Extortions* and *Oppressions* of *Purveyors*, are Enacted to be *holden and kept in all points, and put in Execution in this Land of Ireland*.

And in the 32d year of *Henry the Sixth, Cap. 1.* by a Parliament in *Ireland*,

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And in the 32d year of *Henry the Sixth*, *Cap. 1.* by a Parliament in *Ireland*,

tis Enacted, *that all the Statutes made against Provifors to the Court of Rome, as well in England as in Ireland, be had and kept in Force.*

After this, in a Parliament at Drogheda the 8th of Edward IV. cap. 1. It was Ratify'd, that the English Statute against Rape, made the 6th of Richard the Second, should be of Force in Ireland, from the 6th day of March last past : *And that from henceforth the said Act, and all other Statutes and Acts made by Authority of Parliament within the Realm of England, be Ratified and Confirmed, and Adjudged by the Authority of this Parliament in their Force and Strength, from the said sixth day of March.* We shall hereafter have Occasion of taking farder Notice of this Statute upon another Account.

Lastly, In a Parliament held at Drogheda, the 10th of Henry the Seventh, cap. 22. it is Enacted, *That all Statutes late (that is, as the Learned in the Laws expound it, before that time) made in England, concerning the Common and Publick Weal of the Same, from henceforth be*
Deem'd

Deem'd effectual in Law, and be Accepted,
Used and Executed within this Land of
Ireland in all Points, &c.

And in the 14th Year of the same
Kings Reign, in a Parliament held at
Tristle-Dermot, it was Enacted, That all
Acts of Parliament made in *England* for
punishing *Customs, Controulers and Search*
ers, for their Misdemeanours: or for
Punishment of *Merchants or Factors*, be
of Force here in *Ireland*, provided they
be first Proclaim'd at *Dublin, Drogheda,*
and other Mercat-Towns.

Thus we see by what Steps and De-
grees all the Statutes which were made
in *England* from the time of *Magna Char-*
ta, to the 10th of *Henry the Seventh*,
which did concern the Common Publick
Weal, were Receiv'd, Confirm'd, Al-
low'd, and Authoriz'd to be of Force in
Ireland: all which was done by Assent
of the *Lords Spiritual and Temporal*, and
the *Commons in the Parliament of Ireland*
Assembled, and no otherwise.

We shall next Enquire, whether there
are not other Acts of the English Parli-
ament,

ament, both *before* and *since* the 10th of *Henry* the Seventh, which *were* and *are* of Force in *Ireland*, tho not Allowed of by Parliament in this Kingdom. And we shall find, that by the Opinion of our best Lawyers, *there are diverse such*; but then they are only such as are *Declaratory* of the *Ancient Common Law* of *England*, and not *Introductive* of any *New Law*: for these become of Force by the first *General Establishment* of the *Common Laws* of *England* in this Kingdom, under *Henry* the Second, *King John*, and *Henry* the Third: and need no particular Act of *Ireland* for their Sanction.

As to those *English Statutes* since the 10th of *Henry* the Seventh, that are *Introductive* of a *New Law*, it was never made a Question whether they should Bind *Ireland*, without being allowed in Parliament here; till of very late Years this Doubt began to be moved; and how it has been Carried on and Promoted, shall Appear more fully hereafter

I say, *Till of very late Years*; for the *Antient Precedents* which we have to the
contra.

contrary, are very numerous. Amongst many, we shall mention the following Particulars.

In the 21st of *Henry* the 8th an Act was made in *England* making it Felony in a Servant that runneth away with his Masters or Mistresses Goods. This Act was not received in *Ireland*, till it was Enacted by a Parliament held here in the 33^d of *Henry* the 8th. c. 5. Sef. 1.

In the 21st of *Henry* VIII. c. 19. there was a Law made in *England*, That all Lords might Distrain on the Lands of them holden, and make their Avowry not naming the Tenant, but the Land. But this was not of force in *Ireland*, till Enacted here in the 33^d of *Henry* VIII. C. 1. Sef. 1.

An Act was made in *England*, Anno 31. *Henry* VIII. That Joint-Tenents and Tenents in Common should be compelled to make Partition, as Co-partners were compellable at Common Law. But this Act was not Receiv'd in *Ireland* till Enacted here Anno 33. *Henry* VIII. c. 10.

An. 27. Henry VIII. c. 10. The Statute for Transferring Uses into Possession was made in England; but not admitted in Ireland till 10. Car. 1. Sef. 2.

In like manner, the *English Statute 33. Henry VIII. c. 1. Directing how Lands and Tenements may be dispos'd by Will, &c.* was not of force in *Ireland* till 10. Car. 2. Sef. 2.

The Act of Uniformity of Common Prayer and Administration of the Sacraments was made in *England* the 1st. of *Elizabeth* c. 2. but was not Establish'd in *Ireland* till the 2d. of *Elizabeth* c. 2. And so that of *England*. 14. Car. 2. c. 14. Was not received in *Ireland* till 17. and 18. Car. 2. c. 6.

The Statute against Wilful Perjury made in *England*, 5. *Elizabeth*. c. 9. was not Enacted in *Ireland* till 28 *Eliz.* c. 1.

So the *English Act* against Witchcraft and Sorcery made 5 *Eliz.* c. 16. And another Act against Forgery 5 *Eliz.* c. 14. were neither of them in force in *Ireland*, till the 28th of Her Reign, Cap. 3. and 4.

The

The *English* Statutes against Pirates was made the 28th of *Henry* 8. c. 15. but not in *Ireland* till the 12th of King *James*, c. 2.

In *England* an Act was made the 27th of *Eliz.* c. 4. against Fraudulent Conveyances; but it was not in force in *Ireland* till Enacted here the 10th of *Charles*, c. 3. Sec. 2.

In the 15th Year of King *Charles* the 1st. in a Parliament held at *Dublin*, there were Six *English* Statutes made Laws of this Kingdom, with such Alterations as best fitted them to the State thereof, viz.

21. *Jac.* c. 14. For pleading the General Issue in Intrusions brought by the King, by Chap. 1. of the *Irish* Statutes.

31 *Eliz.* c. 2. For Abridging of Proclamations on Fines, by Chap. 2.

2. and 3 *Edw.* 6. c. 8. Concerning Offices before the Escheator, by Chap. 4.

31 *Eliz.* c. 1. Discontinuance of Writs of Error in the Exchequer Chamber, by Chap. 5.

8 *Eliz.* c. 4. and 18 *Eliz.* c. 7. Concerning Clergy, by Chap. 7.

24 Hen: 8. c. 5. Concerning Killing
 a Rober, by Chap. 9.

There are Six *English* Statutes likewise passed in the time of King Charles the 2d. upon and soon after the Restoration, some of which were not passed into Laws in *Ireland* till a Year, two or three, afterwards: As will appear by consulting the Statute Books.

And in the First Year of *William* and *Mary*, Ses. 2. 9. an Act passed in *England* declaring all *Attainders and other Acts made in the late pretended Parliament under King James at Dublin void*: But was not Enacted here in *Ireland* till the 7th Year of King *William* c. 3. And this was thought requisite to be done upon mature consideration thereon before the King and Council of *England*, notwithstanding that the *English* Act does particularly name *Ireland*, and was wholly design'd for, and relates thereto.

The like we may find in several other Statutes of *England*, passed since His present Majesties Accession to the Throne, which have afterwards been passed here

in *Ireland*, with such Alterations as make them practicable and agreeable to this Kingdom. Such as are amongst others, The Act for *Disarming Papists*. The Act of *Recognition*. The Act for taking away *Clergy* from some Offenders. The Act for taking *Special Bail* in the Country, &c. The Act against *Clandestine Mortgages*. The Act against *Cursing and Swearing*.

These, with many more, are to be found in our Statute Books in the several Reigns of *Henry the 8th.* *Edward the 6th,* *Queen Elizabeth,* *King James,* *King Charles the 1st and 2d.* And *King William.* But it is not to be found in any Records in *Ireland*, that ever any Act of Parliament introductive of a new Law made in *England*, since the time of *King John*, was by the Judgement of any Court received for Law, or put in Execution in the Realm of *Ireland* before the same was Confirmed and Assented to by Parliament in *Ireland*.

And thus I presume we have pretty clearly made out our *Fourth Enquiry*

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fore.

forementioned : and shewen plainly the several steps by which the English form of Government, and the English Statute Laws were received in this Kingdom ; and that this was wholly by the Peoples consent in Parliament, to which we have had a very Antient Right, & as full a Right as our next Neighbours can pretend to or challenge.

I shall now consider the Objections and Difficulties that are moved on this Head drawn from Precedents, and Passages in our Law Books that may seem to prove the contrary.

First 'tis urg'd, That in the Irish Act concerning Rape passed Anno 8 Edward 4. c. 1. 'tis expressed, that a Doubt was conceiv'd whether the English Statute of the 6th of Richard the 2d. c. 6. ought to be of force in Ireland without a Confirmation thereof in the Parliament of Ireland. Which shews (as some alledge) that even in those days it was held by some, That an Act of Parliament in England might bind Ireland before it be consented to in Parliament here. But

But I conceive this Gloss is rais'd meerly for want of Expressing the Reason of the said Doubt in the Irish Statute of the 8th of *Edward* the 4th. c. 1. which we may reasonably judge was this. By the Statute of *Westminster* the 2d. c. 34. a Woman that eloped from her Husband and lived with the Adulterer, or a Wife that being first Ravish'd did afterwards consent, and lived with the Ravisher, she should loose her Dower. This Statute of *Westminster* the 2d. was made of force in *Ireland* by an Act passed here the 13th of *Edward* the 2d, as we have seen before, pag. 68, 69. Afterwards by the English Statute of the 6th of *Richard* the 2d. c. 6. there was a further addition made to the said Statute of *Westminster* the 2d. to this effect, That a Maiden or Wife being Ravished, and afterwards consenting to the Ravishers, as well the Ravisher as she that was Ravished shall be disabled to claim all Inheritance or Dower after the death of her Husband or Ancestor.

On this account the Doubt was here raised in *Ireland* in the 8th of *Edward* the 4th. c. 1. Whether this latter English Statute of the 6th of *Richard* the 2d. c. 6. were not in force in *Ireland*, by virtue of the Irish Statute of the 13th of *Edward* the 2d. which confirmed the Statute of *Westminster* the 2d. c. 34. And for settling this Doubt the said Statute of the 8th of *Edward* the 4th c. 1. was passed in *Ireland*, and we find very good reason for the said Doubt. For the English Statute of the 6th of *Richard* the 2d. c. 6. contained but a small addition to the Statute of *Westminster* the 2d c. 34. and we see that even this addition it self was judged not to be of force in *Ireland* till Enacted here. For the said Irish Statute of the 8th of *Edward* the 4th c. 1. makes the said Statute of the 6th of *Richard*. 2d. c. 6. of Force in *Ireland* only from the 6th of *March* then last past.

'Tis urg'd secondly, That tho' perhaps such Acts of Parliament in *England* which do not Name *Ireland*, shall not be

be construed to Bind *Ireland*, yet all such English Statutes as mention *Ireland*, either by the *General words of all His Majesty's Dominions* or by particularly Naming of *Ireland*, are and shall be of Force in this Kingdom.

This being a Doctrine first broach'd Directly (as I conceive) by *William Hufsey*, Lord Chief Justice of the Kings Bench in *England*, in the first year of *Henry the Seventh*, and of late Revived by the Lord Chief Justice *Cook*, and strongly urged, and much rely'd upon in these latter Days : I shall take the Liberty of Enlarging thereon, tho' I venture thereby to swell this Pamphlet to a size greater than I desire or design'd.

First therefore, As to such English Statutes as seem to comprehend *Ireland*, and to Bind it under the *General Words of all his Majesty's Dominions* or *Subjects*, whatever has been the Opinion of Private and Particular Lawyers in this Point, I am sure the Opinions of the Kings of *England*, and their Privy Council, have been otherwise : 'Tis well known

known since *Poyning's Act* in *Ireland*, the 10th of *Henry* the Seventh, no Act can pass in our Parliament here, till it be first Assented to by the King and Privy Council of *England*, and transmitted hither under the Broad Seal of *England*: Now the King and his Privy Council there, have been so far from surmising that an Act of Parliament of *England*, mentioning only in General, *All the King's Dominions or Subjects*, should Bind *Ireland*, that they have clearly shewn the contrary, by frequently Transmitting to *Ireland*, to be pass'd into Laws here, English Statutes, where in the General Words of *all the Kings Dominions or Subjects* were contain'd; which would have been to no purpose, but meerly *Actum Agere*, had *Ireland* been Bound before by those English Statutes.

Of this I shall give the following Examples amongst many others.

The Act of Parliament in *England* against *Appeals to Rome*, 24 *Hen.* 8. c. 12. by exprefs words extends to all his Majesties Dominions, yet the same was
not

not in force, nor receiv'd in *Ireland*, till it was Enacted by Parliament there, the 28th of *Hen. 8. c. 6.*

In like manner the Statutes made in *England* concerning *First Fruits*, 26 *Hen. 8. c. 3.* and the *Act of Faculties*, 25 *Hen. 8. c. 21.* tho' each of them by exprefs words comprize *All his Majesties Subjects and Dominions*, were not receiv'd as Laws in *Ireland*, till the former was Enacted there, 28 *Hen. 8. c. 4.* and the latter the 28 *Hen. 8. c. 19.* and so the Statute Restoring to the Crown all Jurisdiction Ecclesiastical made in *England*, Anno 1 *Eliz. c. 1.* and therein giving Power to Erect an Ecclesiastical High-Commission-Court in *England* and *Ireland*, yet it was not of Force in *Ireland* till Enacted there, Anno 2 *Eliz. c. 1.* And tho' the said *English Act*, in relation to Erecting such an High-Commission-Court, was Repeal'd 17 *Car. 1. c. 11.* and the Repeal confirm'd the 13 *Car. 2. c. 12.* And the late Bill of Rights, 1 *W. and M. Sess. 2. c. 2.* in *England*, has damn'd all such Courts. Yet the
Act

Act in *Ireland* 2 *Eliz. c. 1.* remains still in force here ; and so it was lately declar'd here by the Lord High-Chancellor *Porter*, Lord Chief-Justice *Rynel*, Lord-Chief Baron *Hely*, Mr. Justice *Cox*, Mr. Justice *Jeffreyson*, in the Case of Dr. *Thomas Hacket*, late Bishop of *Down*, who was depriv'd of the said Bishoprick by such a Commission, for great Enormities ; the Commissioners being Dr. *Dopping* late Bishop of *Meath*, Dr. *King*, the present Bishop of *London-Derry*, and and Dr. *Wiseman*, late Bishop of *Dromore*.

And truly I see no more Reason for Binding *Ireland* by the *English* Laws under the General Words of all his Majesties Dominions or Subjects, than there is for Binding *Scotland*, by the same ; for *Scotland* is as much his Dominion, and Scotsmen as much his Subjects as *Ireland* and *Irish-men* : If it be said, That *Scotland* is an Antient Separate and Distinct Kingdom from *England* ; I say, So is *Ireland* : The Difference is, *Scotland* continued Separate from the Kings of *England* till of late Years, and *Ireland* continu-

tinued *separate* from *England* but a very little while in the Person of King *John*, before the Death of his Father, and of his Brother *Richard* the First, without issue. But then 'tis to be considered, that there was a *Possibility*, or even a *Probability*, that *Ireland* might have continued *separate* from the Crown of *England*, even to this very Day, if *Richard* the First had left behind him a Numerous Progeny.

Secondly, As to such *English* Statutes as particularly *Name Ireland*, and are therefore said to be of Force in this Kingdom, tho' never Enacted here; I shall consider only the more *Antient Precedents* that are offered in Confirmation of this Doctrine: For as to those of *later Date*, 'tis these we complain of, as bearing hard on the *Liberties* of this Country, and the *Rights* of our Parliaments, and therefore *these* ought not to be produced as Arguments against us. I presume, if I can shew, that the *Antient Precedents* that are produced, *do not conclude* against us; it will follow that
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the *Modern* Instances given, *ought not to conclude* against us ; that is to say plainly, These *ought not* to have been made as they are, as wanting Foundation both from Authority and Reason.

The *Antient* Precedents of *English* Statutes, particularly *Naming Ireland*, and said to be made in *England* with a Design of Binding *Ireland*, are chiefly these three.

1. *Statutum Hiberniæ*, 14 H. 3.
2. *Ordinatio pro Statu Hiberniæ*,
17 Edw. 1.
3. And the Act that all *Staple* Commodities passing out of *England* or *Ireland*, shall be carried to *Callis*, as long as the *Staple* is at *Callis*, 2 Hen. 6. c. 4. On which *Hussey* delivered his Opinion, as we shall see more fully hereafter.

These Statutes, especially the two first, being made for *Ireland*, as their Titles import, have given occasion to think, that the Parliament of *England* have

have a *Right* to make Laws for *Ireland*, without the *Consent* of their Chosen *Representatives*. But if we Enquire farther into this matter, we shall find this Conclusion not fairly Deduced.

First, the *Statutum Hiberniæ*, 14 Hen. 3. as 'tis to be found in the Collection of *English Statutes*, is plainly thus : The Judges in *Ireland* conceiving a Doubt concerning Inheritances devolved to Sisters or Coheirs, *viz.* Whether the younger Sisters, ought to hold of the Eldest Sister, and do Homage unto her for their Portions, or of the Chief Lord, and do Homage unto him ; therefore *Girald Fitz Maurice*, the then Lord Justice of *Ireland*, dispatcht four Knights to the King in *England*, to bring a Certificate from thence of the *Practice* there used, and what was the *Common-Law* of *England* in that Case. Whereupon Hen. 3. in this his Certificate or Rescript, which is called *Statutum Hiberniæ*, meerly informs the Justice what the *Law* and *Custom* was in *England*, *viz.* That the Sisters ought to hold of the Chief Lord,

and not of the Eldest Sister. And the close of it commands, that *the foresaid Customs that be used within our Realm of England in this Case, be Proclaimed throughout our Dominion of Ireland, and be there observ'd. Teste meipso apud West: Minst. 9. Feb. An. Reg. 14.*

From whence 'tis manifest, that this *Statutum Hiberniæ* was no more than a Certificate of what the *Common Law of England* was in that Case, which *Ireland* by the *Original Compact* was to be Governed by. And shews no more, that therefore the Parliament of *England* may bind *Ireland*, than it would have proved, that the *Common Wealth of Rome* was subject to *Greece*, if, after *Rome* had received the Law of the *Twelve Tables*, they had sent to *Greece* to know what the Law was, in some special Case.

The Statute call'd *Ordinatio pro Statu Hiberniæ*, made at *Nottingham*, the 17th of *Edward the First*, and to be found in *Pultons Collection*, pag. 76. Edit. Lond. 1679. was certainly never Received, or of Force, in *Ireland*. This is Manifest from

from the very first Article of that Ordinance, which Prohibits the *Justice of Ireland* or others the Kings Officers, there to Purchase Land in that Kingdom, or within their respective Balliwicks without the Kings Licence, on pain of Forfeitures. But that this has ever been Otherwise, and that the Lords Justices, and other Officers here have Purchas'd Lands in Ireland, at their own Will and Pleasure, needs no Proof to those who have the least knowledge of this Country. Nor does it appear by any Inquisition, Office, or other Record, that any one ever Forfeited on that Account.

Moreover this *Ordinatio pro Statu Hiberniæ*, is really in it self No Act of Parliament, but meerly an Ordinance of the King and his Privy Council in England; which appears as well from the Preamble to the said Ordinance, as from this Observation likewise, That King Edward the First held no Parliament in the 17th year of his Reign: Or if this were a Parliament, this *Ordinatio pro Statu Hiberniæ*, is the only Act thereof
that

that is Extant: But 'tis very improbable, that only this *single Ordinance* should appear, if any such Parliament were call'd together.

Thirdly as to the *Staple Act*, 2. *Hen.* 6. c. 4. which expressly names *Ireland*, and *Hussey's* Opinion thereon. The Case, as we find it in the Year-Books of *Mich.* 2. *Rich.* 3. fol. 11. and *Mich.* 1. *Hen.* 7. fol. 3. is in short thus: The Merchants of *Waterford* having Ship'd off some Wool, and consign'd it to *Sluice* in *Flanders*, the Ship by stress of Weather was put in at *Callis*, where Sir *Thomas Thwaits*, Treasurer of *Callis*, seized the said Wool as forfeited, half to himself, and half to the King, by the said Statute; hereupon a Suit was commenced between the said Merchants and the said Treasurer, which was brought before all the Judges of *England* into the Exchequer Chamber: The Merchants pleaded the King's *License* to the Citizens of *Waterford* and their Successors, for carrying Wool where they pleased; and the Questions before the Judges were

were two, Viz. *Whether this Staple Act Binds Ireland; And Secondly, Whether the King could grant his License, contrary to the Statute, and especially where the Statute gives half the Forfeiture to the Discoverer.*

The first Point only relates to our present purpose; and herein we find the foresaid Year-Book of 2 Richard 3. fol. 12. to Report it thus: *Et ibi (in the Exchequer Chamber) quoad Primam Questionem Dicebant quod Terr. Hibern. inter se habent Parliament. & omnimodo Cur. prout in Angl. & per Idem Parliamentum faciunt Leges & Mutant Leges & non Obligantur per Statuta in Anglia, quia non hic habent Milites Parliamenti (& is not that an unanswerable Reason ?) sed hoc intelligitur de terris & rebus in terris illis tantum efficiendo; sed Personæ eorum sunt Subject. Regis & tanquam Subjecti erunt Obligati ad aliquam rem extra Terram illam faciend. contra Statut. sicut habitantes in Calestia, Gascoignie, Guien, &c. dum suere Subjecti; & Obedientes erunt sub Admiral. Angl. de re fact. super Altum Ma-*

*re; & similiter. Brev. de Errore de Judici-
cio reddit. in Hibern. in Banco Reg. hic in
Angl.*

I have *verbatim* transcribed this Pas-
sage out of the foresaid Year-Book, that
I might be sure to omit nothing that
may give the Objection its full weight.
And all that I can answer to it, is this:
1. That when the foresaid Case came
a second time under the Consideration
of the Judges in the *Exchequer Cham-
ber* in *Mich. 1 Hen. 7. fol: 3.* we find
it Reported thus: *Hussey the Chief Ju-
stice said, That the Statutes made in Eng-
land shall bind those of Ireland, which was
not much gain-said by the other Judges,
notwithstanding that some of them were of
a contrary Opinion the last Term in his
Absence.* How the Presence and Opini-
on of the Chief Justice came to influ-
ence them now, I leave the Reader to
judge.

2. That *Brook* in Abridging this Case
of the first of *Hen. 7. fol. 3. Title Par-
liament, Sec: 90:* adds, *Tamen Nota,
That Ireland is a Kingdom by it self, and
hath*

both Parliaments of its own; intimating thereby, That therefore *Hussey's Opinion* herein was *Unreasonable*.

3. That 'tis manifest, if *Hussey* mean by his words, That all Acts of Parliament in *England* shall bind *Ireland*, it is directly contrary to the Judges Opinion in the second of *Richard* the Third, before recited; for *within* the Land of *Ireland*, they are all positive, That the Authority of the Parliament of *England* will not affect us. They seem at the utmost reach to extend the Jurisdiction of the English Parliament over the Subjects of *Ireland*, only in relation to their Actions beyond Seas, out of the Realm of *Ireland*, as they are the *King of England's Subjects*; but *even this* will appear *Unreasonable*, when we consider, that by the same Argumentation, *Scotland* it self may be bound by English Laws, in relation to their Foreign Trade, as they are the *King of Englands Subjects*. The Question is, Whether *England* and *Ireland* be two Distinct Kingdoms, and

whether they have each their respective Parliaments ; neither of which will be deny'd by any Man : And if so, there can be no Subordination on either side, each is compleat in its own Jurisdiction & ought not to interfere with t' other in any thing. If *being the King of England's Subjects*, be a Reason why we ought to submit to Laws, (in relation to our Trade abroad, in places where the Parliament of *England* has no Jurisdiction) *which have not receiv'd our Assent* ; the People of *England* will consider whether they also are not the King's Subjects, and may therefore (by this way of reasoning) be bound by Laws which the King may Assign them without their Assent, in relation to their Actions *Abroad*, or Foreign Trade : Or whether they had not been Subjects to the *King of France*, had our King's continu'd their Possession of that Country, and there kept the Seat of the Monarchy ; and then, had *France* been stronger than *England*, it might seem that the Sub-

jects of these Kingdoms might have been bound by Laws made at *Paris*, without their own Consent. But let this Doctrine never be mention'd amongst the *Freeborn* Subjects of these Nations.

Thus I have done with the *Three Principal* instances that are usually brought against us, on the Stress that is laid on English Acts of Parliament, particularly *Naming Ireland*.

There have been other Statutes or Ordinances made in *England* for *Ireland*, which may reasonably be of force here, because they were made and Assented to by our own Representatives. Thus we find in the *White Book* of the Exchequer in *Dublin*, in the 9th year of *Edward the First*, a Writ sent to his Chancellour of *Ireland*, wherein he mentions, *Quædam Statuta per nos de Assensu Prelatorum Comitum Baronum & Communitates Regni nostri Hiberniæ, nuper apud Lincoln & quædam alia Statuta postmodum apud Eborum facta.* These we may suppose were ei-

ther Statutes made at the Request of the States of *Ireland*, to explain to them the *Common Law of England*; or if they were introductive of *New Laws*, yet they might well be of force in *Ireland*, being Enacted by the Assent of our own Representatives, The Lords Spiritual and Temporal, and Commons of *Ireland*; as the Words aforementioned do shew: And indeed, these are instances so far from making against our Claim, that I think nothing can be more plainly for us; for it manifestly shews, that the King and Parliament of *England* would not Enact Laws to Bind *Ireland*, without the Concurrence of the Representatives of this Kingdom.

Formerly, When *Ireland* was but thinly Peopled, and the English Laws not fully currant in all parts of the Kingdom, 'tis probable that then they could not frequently Assemble with conveniency or safety to make Laws in their own Parliaments at home; and therefore during the heats of Rebellions,

or Confusion of the Times, they were forced to Enact Laws in *England*. But then this was always by their proper *Representatives* : For we find that in the Reign of *Edward* the Third, (and by what foregoes, 'tis plain 'twas so in *Edward* the First's Time) Knights of the Shire, Citizens, and Burgeses, were Elected in the Shires, Cities and Burroughs of *Ireland*, to serve in Parliament in *England*, and have so served accordingly. For amongst the Records of the Tower of *London*, Rot. Claus. 50. Edw. 3. Parl. 2. Membr. 23. We find a Writ from the King at *Westminster*, directed to *James Butler*, Lord Justice of *Ireland*, and to R. Archbishop of *Dublin* his Chancellour, requiring them to issue Writes under the great Seal of *Ireland*, to the several Counties, Cities and Burroughs, for satisfying the Expences of the Men of that Land, who last came over to serve in Parliament in *England*. And in another Roll the 50th of Edw. III. Membr. 19. On Complaint to the King by *John Draper*, who was chosen
 Burges

Burgeſſ of *Cork* by Writ, and ſerved in the Parliament of *England*, and yet was deny'd his Expences by ſome of the Citizens, Care was taken to re-imburſe him.

If from theſe laſt mention'd Records, it be concluded that the Parliament of *England* may Bind *Ireland*; it muſt alſo be Allow'd that the People of *Ireland* ought to have their *Representatives* in the Parliament of *England*. And this I believe we ſhould be willing enough to embrace; but this is an Happineſs we can hardly hope for.

This ſending of *Representatives* out of *Ireland* to the Parliament in *England*, on ſome occaſions, was found in Proceſs of time to be very Troubleſome and Inconvenient; and this, we may preſume, was the Reaſon, that afterwards, when times were more ſettled, we fell again into our old Track, and regular courſe of Parliaments in our own Country: and hereupon the Laws afore-noted, pag. 64. were Enacted, Eſtabliſhing that no Law made in the Parliament of *England*,
ſhould

should be of Force in Ireland, till it was allow'd and Publish'd in Parliament here.

I have said before, pag. 85. that I would only consider the more Antient Precedents that are offered to prove, That Acts of England particularly Naming Ireland, should bind us in this Kingdom; and indeed it were sufficient to stop here, for the Reason above Alledged. However, I shall venture to come down lower, and to enquire into the Modern Precedents of English Acts of Parliament alledged against us: But still with this Observation, That 'tis these we Complain against as Innovations, and therefore they ought not to be brought in Argument against us.

I do therefore again assert, that before the Year 1641. there was no Statute made in England introductory of a New Law that interfered with the Right which the People of Ireland have to make Laws for themselves, except only those which we have before mentioned, and which we have discussed at large,
and

and submit to the Readers Judgment.

But in the Year 1641. and afterwards in *Cromwel's* time, and since that, in King *Charles II.* and again very lately in King *William's* Reign, some Laws have been made in *England* to be of Force in *Ireland*. But how this came to pass, we shall now Enquire.

In the 17th Year of K. *Charles I.* which was in the Year 1642. there were three or four Acts of Parliament made in *England*, for encouraging *Adventurers*, to raise Money for the speedy suppression of the Horrid Rebellion which broke out in *Ireland* the 23d of *October* 1641. The Titles of these Acts we have in *Pulton's Collection of Statutes*: But with this Remark, *That they are made of no Force by the Acts of Settlement and Explanation* passed in King *Charles II's* time in the Kingdom of *Ireland*. So that in these we are so far from finding Precedents for *England's* Parliament binding *Ireland*, that they plainly shew, that the Parliament of *Ireland* may Repeal an Act passed in *England*, in relation

tion to the Affairs of *Ireland*. For 'tis very well known, that Persons who were to have Interests and Titles in *Ireland* by virtue of those Acts passed in *England*, are cut off by the *Acts of Settlement and Explanation*. And indeed there is all the Reason in the World that it should be so, and that Acts made in a Kingdom by the Legal Representatives of the People, should take place of those made in another Kingdom. But however it will be said, that by those Acts 'tis manifest that *England* did presume they had such a Right to pass Acts binding *Ireland*, or else they had ne're done it. To which I Answer, That considering the condition *Ireland* was in at that time, viz. under an horrid *Intestine Rebellion*, flaming in every corner of the Kingdom; 'twas impossible to have a Parliament of our own; yet it was absolutely necessary that something should be done towards suppressing the Violences then raging amongst us: And the only means could then be practised, was for the Parliament of

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England

England to interpose, and do something for our Relief and Safety; these were the best Assurances could be had at that juncture: But when the Storm was over, and the Kingdom quieted, we see new measures were taken in a Legal Parliament of our own.

As to what was done for *Ireland* in the Parliament of *England* in *Cromwel's* time, besides the Confusion and Irregularity of all Proceedings in those days, which hinders any of them to be brought into Precedent in these times; We shall find also that then there were *Representatives* sent out of this Kingdom, who sat in the Parliament of *England*, which then was only the House of Commons. We cannot therefore argue from hence, that *England* may bind us; for we see they allow'd us *Representatives*, without which, they rightly concluded, they could not make Laws *Obligatory* to us;

I come now to King *Charles* the 2^{ds} time: And in it we shall find the fol-

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lowing English Statutes made, in which the Kingdom of *Ireland* is concerned.

The first is an *Act against Importing Cattle from Ireland or other Parts beyond Seas*. It was only temporary by 18 *Ch. 2. c. 2.* but made perpetual 20 *Ch. 2, c. 7.* and 32. *Ch. 2. c. 2.* This Act, however prejudicial to the Trade that was then carried on between *Ireland* and *England*, does not properly Bind us, more than it does any other Country of the World. When any thing is Imported, and Landed in *England*, it becomes immediatly subject to the Laws thereof, so that herein we cannot be said properly to be *Bound*.

Secondly, The Acts against Planting *Tobacco* in *England* and *Ireland*, 12 *Ch. 2 c. 34.* and 15. *Ch. 2. c. 7.* and 22 and 23 *Ch. 2. c. 26. &c.* do positively Bind *Ireland*. But there has never been an Occasion of Executing it here; for I have not heard that a Rood of *Tobacco* was ever Planted in this Kingdom. But however that takes not off the *Obligation* of the Law : 'Tis only want of our

(100)
Consent, that I urge against that. I see no more Reason for sending a Force to Trample down an Acre of *Tobacco* in *Ireland* by these Statutes, than there would be for Cutting down the Woods of *Shelela*, were there an Act made in *England* against our Planting or Having *Timber*.

Thirdly, The *Act for Encouraging Shipping and Navigation*, by express name Mentions and Binds *Ireland*; and by the last Clause in the Act, Obliges all Ships belonging thereto importing any Goods from our Foreign Plantations, to touch first at *England*.

Fourthly, The Acts Prohibiting the Exportation of Wool from *Ireland*, to any Country except to *England*, do likewise strongly Bind us, and by the 12 Car. 2. c. 32. it was made highly penal on us, and by the 14th of Car. 2. c. 18. 'tis made Felony:

To these three last Acts, I must confess, I have nothing to urge, to take off their Efficacy; Name us they do most certainly, and Bind us so, as we do

do not transgress them. But how *Rightfully* they do this, is the matter in Question. This am sure of, that before these Acts in King *Charles* the Second's Time, (the Eldest of which is not over Thirty Seven Years) *there is not one Positive full Precedent to be met with in all the Statute Book, of an English Act Binding the Kingdom of Ireland.* And on this Account we may venture to Assert, That these are at least *Innovations* on us, as not being warranted by any former Precedents.

And shall *Proceedings only of Thirty Seven Years standing*, be urg'd against a Nation, to Deprive them of the *Rights and Liberties* which they Enjoy'd for Five Hundred Years before, and which were Invaded without and against their *Consent*, and from that Day to this have been constantly complain'd of? Let any *English Heart* that stands so *Justly* in Vindication of his own *Rights and Liberties*, answer this Question, and I have done.

I am now arriv'd at our Present Days,
under

under the Happy Government of His Majesty King *WILLIAM* the Third; and I am sorry to reflect, That since the late Revolution in these Kingdoms, when the Subjects of *England* have more strenuously than ever Asserted their own *Rights*, and the *Liberty* of Parliaments, it has pleased them to bear harder on their Poor Neighbours, than has ever yet been done in many Ages foregoing. I am sure what was then done by that Wise and Just Body of Senators, was perfectly out of Good Will and Kindness to us, under those Miseries which our Afflicted Country of *Ireland* then suffered. But I fear some Men have since that, made use of what was then done, to other Purposes than at first intended. Let us now see what that was, and consider the Circumstances under which it was done.

In the Year 1689. when most of the Protestant Nobility, Gentry, and Clergy of *Ireland*, were driven out of that Kingdom by the Insolencies and Barbarities of the *Irish Papists*, who were then

then in Arms throughout the Kingdom, and in all Places of Authority under King James, newly Return'd to them out of *France*; the only Refuge we had to fly to was in *England*, where Multitudes continued for many Months, destitute of all manner of Relief, but such as the Charity of *England* afforded, which indeed was very *Munificent*, and never to be forgotten.

The Protestant Clergy of *Ireland* being thus Banish'd from their Benefices, many of them Accepted such small Ecclesiastical Promotions in *England*, as the Benevolence of well dispos'd Persons presented them with. But this being directly contrary to a Statute in this Kingdom, in the 17 and 18 of Charles the Second, Cap. 10, Intituled, *An Act for disabling of Spiritual Persons from holding Benefices or other Ecclesiastical Dignities in England or Wales, and in Ireland at the same time.* The Protestant Irish Clergy thought they could not be too secure in avoiding the Penalty of the last mention'd Act, and therefore applied

plied themselves to the Parliament of England, and obtain'd an Act in the first year of King William and Queen Mary, c. 29. Intituled, *An Act for the Relief of the Protestant Irish Clergy.* And this was the first attempt that was made for Binding Ireland by an Act in England, since his Majesty's Happy Accession to the Throne of these Kingdoms.

Afterwards in the same year, and same Session, Chap. 34. there pass'd an Act in England, *Prohibiting all Trade and Commerce with France*, both from England and Ireland. This also binds Ireland, but was during the Heat of the War in that Kingdom, when 'twas impossible to have a regular Parliament therein, all being in the hands of the Irish Papists. Neither do we complain of it, as hindring us from Corresponding with the King's Enemies, for 'tis the Duty of all Good Subjects to abstain from that. But as Scotland, tho' the King's Subjects, claims an Exemption from all Laws but what they Assent to

Parliament; so we think this our Right also.

When the Banish'd Laity of *Ireland* observ'd the Clergy thus careful to secure their Properties, and provide for the worst as well as they could in that Juncture, when no other means could be taken by a Regular Parliament in *Ireland*, they thought it likewise adviseable for them to do something in relation to their Concerns. And accordingly they obtain'd the *Act for the better Security and Relief of their Majesties Protestant Subjects of Ireland*, 1. W. and M. Ses. 2. c. 9. Wherein King James's *Irish Parliament* at *Dublin*, and all Acts and Attainders done by them, are declared void. 'Tis likewise thereby Enacted, That no Protestant shall suffer any Prejudice in his Estate or Office, by reason of his absence out of *Ireland*, since *December 25. 1685.* and that there should be a remittal of the Kings Quit Rent, from *25 December 1688*, to the end of the War. Thus the Laity thought themselves secure.

And we cannot wonder that during

the Heat of a Bloody War in this Kingdom, when it was impossible to Secure our Estates and Properties by a Regular Parliament of our own; we should have recourse to this Means, as the only which then could be had. We concluded with our selves, that when we had obtained these Acts from the Parliament in *England*, we had gone a great way in securing the like Acts to be passed in a regular Parliament in *Ireland*, whenever it should please God to re-establish us in our own Country. For Wee well knew our own Constitution under *Poynings Law*, That no Act could pass in the Parliament of *Ireland* till approved of by the King and Privy Council of *England*. And we know likewise, that all the Lords, and others of His Majesty's Privy Council in *England* are Members of the Lords or Commons House of Parliament there. And that by obtaining their Assent to Acts of Parliament in Favour of the Irish Protestants, they had in a manner pre-engaged their Assent to the like Bills when they should hereafter come before them as Privy Councillors, in order to be

regularly Transmitted to the Parliament of *Ireland*, there to be passed into Laws of that Kingdom. But instead of all this, to meet with another Construction of what was done herein, and to have it pleaded against us as a Precedent of our Submission, and absolute Acquiescence in the Jurisdiction of the Parliaments of *England* over this Kingdom, is what we complain of as an Invasion (we humbly conceive) of that *Legislative Right* which our Parliament of *Ireland*, claims within this Kingdom.

The next Act pass'd in the Parliament of *England*, Binding *Ireland*, is that for *Abrogating the Oath of Supremacy in Ireland, and Appointing other Oaths*, 3 and 4 *William and Mary*, c. 2. To this the Parliament convened at *Dublin Anno* 1692. under Lord *Sidney*, and that likewise *Anno* 1695. under Lord *Capel*, paid an intire Obedience. And by this ('tis alledged) we have given up our Right, if any we had, and have for ever acknowledged our *Subordination to the Parliament of England*. But let us a little

consider the Force of this Argument.

I readily grant, that this and the other fore-mentioned Act in *England* since the Revolution, when they were made, were look'd upon highly in our Favour, and for our Benefit; and to them as *such*, we have conform'd our Selves. But then, in all Justice and Equity, our Submission herein is to be deem'd *purely voluntary*, and not at all proceeding from the *Right* we conclude thereby in the Legislators. If a Man, who has *no Jurisdiction* over me, *command* me to do a thing that is *pleasing* to me, and I do it; it will not thence follow, that thereby he obtains an *Authority* over me, and that ever hereafter I must Obey him of *Duty*. If I *voluntarily* give my Money to a Man when *I please*, and think it *convenient* for me; this does not Authorize him at any time to *command* my Money from me when *he pleases*. If it be said, this allows Subjects to Obey only whilst 'tis *convenient* for them. I pray it may be considered, whether any Men Obey *longer*, unless they be *forced* to it; and whether

whether they will not *free* themselves from this *Force*, as soon as they can. 'Tis impossible to hinder Men from desiring to *free* themselves from *Uneasiness*, 'tis a Principle of Nature, and cannot be eradicated. If Submitting to an Inconvenience be a *less* Evil than endeavouring to Throw it off, Men will Submit. But if the Inconvenience grow upon them, and be *greater* than the hazard of getting rid of it, Men will Offer at putting it by, let the Statesman or Divine say what they can.

But I shall yet go a little further, and venture to Assert, That the Right of being subject *Only* to such Laws to which Men give their *own Consent*, is so inherent to all Mankind, and founded on such *Immutable* Laws of Nature and Reason, that 'tis not to be *Alien'd*, or *Given up*, by any Body of Men whatsoever: For the End of all Government and Laws being the Publick Good of the Commonwealth, in the Peace, Tranquillity and Ease of every Member therein; whatsoever Act is contrary to this

End,

End, is in it self void, and of no effect: And therefore for a Company of Men to say, *Let us Unite ourselves into a Society, and let us be absolutely Govern'd by such Laws, as such a Legislator, without ever Consulting us, shall devise for us;* 'tis always to be understood, *Provided we find them for our Benefit:* For to say, We will be Govern'd by those Laws, *whether they be Good or Hurtful to us,* is absurd in it self: For to what End do Men joyn in Society, but to avoid Hurt, and the Inconveniencies of the State of Nature?

Moreover, I desire it may be considered, whither the General Application of the Chief part of the *Irish* Protestants, that were at that time in *London*, to the Parliament at *Westminster*, for obtaining these Laws, may not be taken for their *Consent*, and on that Account, and no other, these Acts may acquire their *Binding Force*. I know very well, this cannot be look'd upon as a Regular and Formal *Consent*, such as might be requisite at another more favourable Juncture:

ecture: But yet it may be taken *talis*
qualis, as far as their Circumstances at
 that time would allow, till a more con-
 venient Opportunity might present it
 self.

I am sure, if some such Considerati-
 ons as these, may not plead for us, we
 are of all his Majesties Subjeſties the
 most Unfortunate: The *Rights* and
Liberties of the Parliament of *Eng-*
land have received the greatest Corrobo-
 rations ſince his Majesties Acceſſion to
 the Throne; and ſo have the *Rights* of
Scotland; but the *Rights* of the People
 of *Ireland*, on the other hand, have re-
 ceived the greatest Weakening under
 his Reign, by our Submission (as 'tis
 alledg'd) to theſe Laws that have been
 made for us.

This certainly was not the Deſign of
 his Maſteſty's Glorious Expedition into
 theſe Kingdoms; That, we are told by
 Himſelf, (whom we cannot poſſibly
 miſtruſt) was to Aſſert the *Rights* and
Liberties of theſe Nations; and we do
 humbly preſume that his Maſteſty will
 be

be graciously pleased to permit us to Enjoy the Benefits thereof.

And thus I have done with the *Fourth Article* proposed. As to the *Fifth*, viz. *The Opinions of the Learned in the Laws relating to this Matter*; 'tis in a great measure dispatch'd by what I have offered on the *Fourth Head*; I shall therefore be the more brief thereon. And I think indeed the only Person of Note that remains to be considered by us, is the Lord Chief Justice *Cook*, a Name of great Veneration with the Gentlemen of the long Robe, and therefore to be treated with all respect and Deference.

In his *Seventh Report* in *Calvin's Case*; he is proving that *Ireland* is a Dominion Separate and Divided from *England*; for this he quotes many Authorities out of the Year Books and Reports; and amongst others, he has that which I have before mention'd; pag. 91. 2 R. 3. f. 12, which he Transcribes in this manner, *Hibernia habet Parliamentum, & faciunt Leges, & nostra Statuta non ligant eos, quia non mittunt Mili-*

tes ad Parliamentum; and then adds in a Parenthesis, (*which is to be understood, unless they be specially Named*) sed Personæ eorum sunt subiecti Regis sicut inhabitantes in Caleſſia, Gasconia, & Guyan. The first thing I shall observe hercon, is the very unfaithfull and broken Citation of this Passage, as will manifestly appear by comparing it with the true Transcript I have given thereof before, pag. 91. Were this all, 'twere in some measure pardonable. But what cannot be excused, is the Unwarrantable Position in his Parenthesis, without the least colour or ground for it in his Text. Herein he concludes down right Magisterially, *So it it must be, this is my Definitive Sentence*; as if his Plain Assertion, without any other Reason, ought to prevail; nay, even point Blank against the irrefragable Reason of the Book he quotes. I confess in another place of Calvin's Case, viz. fol. 17. b. he gives this Assertion a Colour of Reason, by saying, *That the Ireland be a Distinct Dominion from England, yet the Title thereof*

thereof being by Conquest, the same by Judgment of Law might by Express Words be bound by the Parliaments of England. How far Conquest gives a Title, we have enquired before: But I would fain know what Lord Cook means by Judgment of Law: Whether he means the Law of Nature and Reason, or of Nations; or the Civil Laws of our Commonwealths; in none of which Senses, I conceive, will he, or any Man, be ever able to make out his Position.

Is the Reason of England's Parliament not Binding Ireland, Because we do not send thither Representatives? And is the Efficacy of this Reason taken off, by our being Nam'd in an English Act? Why should sending Representatives to Parliament, Bind those that send them? Meerly because thereby the Consent of those that are Bound, is obtain'd, as far as those sort of Meetings can possibly permit; which is the very Foundation of the Obligation of all Laws. And is Ireland's being Named in an English Act of Parliament, the least step towards

obtaining the *Consent* of the People of Ireland? If it be not, then certainly my Lord Cook's Parenthesis is to no purpose. And 'tis a wonder to me, that so many Men have run upon this vain Imagination, meerly from the Assertion of this Judge: For I challenge any Man to shew me, that any one *before* him, or any one *since*, but *from him*, has vented this *Doctrine*: And if the bare *Affertion* of a Judge shall bind a *whole Nation*, and Dissolve the *Rights* and *Liberties* thereof, We shall make their Tongues very Powerful, and constitute them greater Lawgivers than the greatest Senates. I do not see why my *Denying* it, should not be as *Authentick* as his *Affirming* it. 'Tis true, He was a great Lawyer and a powerfull Judge; but had no more Authority to *make a Law*, than I or any Man else. But some will say he was a Learned Judge, and may be supposed to have *Reason* for his Position. Why then does he not give it us? And then what he asserts would Prevail, not from the *Authority of the*

P 2

Person

Person, but from the Force of the Reason.
 The most Learned in the Laws have no
 more power to make or alter a Constitu-
 tion. than any other Man ; and their
 Decisions shall no further prevail, than
 supported by Reason and Equity. I
 conceive my Lord Chief Justice Cook
 apply'd himself so wholly to the Study
 of the *Common Laws of England*, that he
 did not enquire far into the *Laws of Na-
 ture and Nations* ; if he had, certainly
 he could never have been Guilty of such
 an Erroneous Slip ; He would have seen
 demonstrably, that *Consent only* gives Hu-
 mane Laws their Force, and that there-
 fore the Reason in the Case he quotes
 is unanswerable, *Quia non mittunt milites
 ad Parliamentum*. Moreover, the As-
 sertion of Cook in this point is directly
 contrary to the whole tenour of the
 Case which he cites : For the very Act
 of Parliament on which the Debate of
 the Judges did arise, and which they
 deemed not to be of Force in *Ireland*,
 particularly names *Ireland*. So that here
 again Lord Cooke's Error appears most
 plainly.

plainly. For this I refer to the Report, as I have exactly delivered it before pag. 90, 91. By which it appears clearly to be the unanimous Opinion of all the Judges then in the *Exchequer Chamber*: That within the *Land of Ireland*, the Parliaments of *England* have no Jurisdiction, whatever they may have over the Subjects of *Ireland* on the open Seas: And the reason is given, *Quia Hibernia non mittit Milites ad Parliamentum in Anglia.*

This Assertion likewise is inconsistent with himself in other parts of his Works. He tells us in his 4th. Inst. pag. 349. *That 'tis plain that not only King John (as all Men allow) but Henry the Second also, the Father of King John, did Ordain and Command, at the instance of the Irish, That such Laws as had been in England should be Observ'd and of Force in Ireland. hereby Ireland being of it self a distinct Dominion, and no part of the Kingdom of England, was to have Parliaments holden there as in England.* And in pag. 12. he tells us, *That Henry the Second sent*

a Modus into Ireland, directing them how to hold their Parliaments. But to what end was all this, if Ireland nevertheless were subject to the Parliament of England? The King and Parliaments of these Kingdoms are the Supream Legislators; if Ireland be subject to Two (its Own, and that of England) it has Two Supreams; 'tis not impossible, but they may Enact different or contrary Sanctions; which of these shall the People Obey? He tells us in Calvin's Case fol. 17. b. That if a King hath a Christian Kingdom by Conquest, as Henry the Second had Ireland, after King John had given to them, being under his Obedience, and Subjection, the Laws of England for the Government of that Country, no succeeding King could alter the same without Parliament. Which, by the way, seems directly contradictory to what he says concerning Ireland six lines below this last cited passage. So that we may observe my Lord Cook enormously stumbling at every turn in this Point.

Thus

Thus I have done with this Reverend Judge ; and in him, with the only *Positive Opinion* against us. I shall now consider what our Law Books offer in our *Favour* on this Point.

To this purpose we meet a Case fully apposite, reported in the Year-Book of the 20th of *Henry* the 6th, fol. 8. between one *John Pilkington* and one *A.*

Pilkington brought a *Scire Facias* against *A.* to shew Cause, why Letters Patents whereby the King had granted an Office in *Ireland* to the said *A.* should not be repeal'd, since the said *Pilkington* had the same Office granted to him by former Letters Patents of the same King to be occupied by himself or his Deputy. Whereupon *A.* pleaded, That the Land of *Ireland* time out of Memory, hath been a Land separated and distinct from the Land of *England*, and Ruled and Governed by the Customs of the same Land of *Ireland*. That the Lords of the same Land, which are of the King's Council, have used from time to time, in the absence of the King,

to Elect a *Justice*, who hath Power to Pardon and Punish all Felons, &c. and to call a Parliament, and by the Advice of the Lords and Commonalty to make Statutes. He alledged further, That a Parliament was Assembled, and that it was Ordain'd by the said Parliament, That every Man who had an Office within the said Land before a certain day, shall occupy the said Office by himself, otherwise, he should forfeit. He shew'd that *Pilkington* Occupied by a Deputy; and that therefore his Office was void, and that the King had granted the said Office to him the said *A.* Hereupon *Pilkington* Demurr'd in Law; and it was debated by the Judges, *Telverton*, *Fortescue*, *Portington*, *Markham*, and *Ascough*, whether the said Prescription in relation to the State and Government of *Ireland*, be good or void in Law. *Telverton* and *Portington* held the Prescription void. But *Fortescue*, *Markham* & *Ascough* held the Prescription good; and that the Letters Patents made to *A.* were good and ought not to be Repeal'd. And in
this

it was agreed by *Fortescue* and *Portington*, That if a Tenth or Fifteenth be granted by Parliament in England, that shall not Bind Ireland, although the King should send the same Statute into Ireland under his Great Seal; Except they in Ireland will in their Parliament approve it: Because they have not any Commandment by Writ to come to the Parliament of England: And this was not Denied by *Markham*, *Telverton*, or *Ascough*.

The *Merchants of Waterford's Case*, which I have observed before, pag. 90. as Reported in the Year Book of the 2d. of *Richard* the 3d. fol. 11, 12, is notorious on our behalf, but needs not be here Repeated.

The Case of the Prior of *Lanthony* in *Wales*, mentioned by *Mr. Pryn* against the 4th Inst. ch. 76. pag. 313. is usually cited against us. But I conceive 'tis so far from proving this; that 'tis very much in our Behalf. The Case was briefly thus. The Prior of *Lanthony* brought an Action in the Com. Pleas of Ireland

against the Prior of *Mullingar*, for an Arrear of an Annuity; and Judgement went against the Prior of *Mullingar*; hereon the Prior of *Mullingar* brought a Writ of Error in the *King's Bench* of *Ireland*, and the Judgment was affirmed. Then the Prior of *Mullingar* Appeal'd to the Parliament in *Ireland* held 5 *Hen. 6.* before *James Butler* Earl of *Ormond*, and the Parliament Revers'd both Judgments. The Prior of *Lanthony* removed all into the *King's Bench* in *England*; but the *King's Bench* refused to intermeddle, as having no Power over what had pass'd in the Parliament of *Ireland*. Hereupon the Prior of *Lanthony* Appeal'd to the Parliament of *England*. And it does not appear by the Parliament Roll, that any thing was done on this Appeal; all that is Entered being only the Petition it self at the end of the Roll. *Vid. Pryn* against the 4th Inst. chap. 76. p. 313.

Now whether this be a Precedent proving the Subordination of our *Irish* Parliament to that of *England*, I leave the Reader to judge. To me it seems the

the clear contrary. For first we may observe, the *King's Bench* in *England* absolutely disclaiming any Cognisance of what had passed in the Parliament of *Ireland*. And next we may observe, That nothing at all was done therein, upon the Appeal to the Parliament of *England*: Certainly if the Parliament of *England* had thought themselves to have a Right to Enquire into this Matter, they had so done, one way or t^e other, and not left the Matter Undetermin'd and in Suspence.

It has ever been acknowledged, that the Kingdom of *Ireland* is inseparably annex'd to the Imperial Crown of *England*. The Obligation that our Legislature lies under by *Poyning's Act*, 10 H. 7. c. 4. makes this Tye between the two Kingdoms indissoluble. And we must ever own it our Happiness, to be thus Annex'd to *England*: And that the Kings & Queens of *England* are by undoubted Right, *ipso facto* Kings and Queens of *Ireland*. And from hence we may reasonably conclude, that if any

Acts of Parliament made in *England*, should be of force in *Ireland*, before they are received there in Parliament, they should be more especially such Acts as relate to the *Succession* and *Settlement* of the *Crown* and *Recognition* of the Kings Title thereto, and the *Power* and *Jurisdiction* of the King. And yet we find in the *Irish* Statutes, 28 *Hen. VIII.* c. 2. An Act for the *Succession* of the King and Queen *Ann*; And another, Chap. 5. declaring the King to be *Supream Head* of the *Church* of *Ireland*; both which Acts had formerly pass'd in the Parliament of *England*. So likewise we find amongst the *Irish* Statutes Acts of *Recognition* of the Kings Title to *Ireland*, in the Reigns of *Henry* the Eighth, *Queen Elizabeth*, King *James*, King *Charles* the Second, King *William* and *Queen Mary*. By which it appears that *Ireland* tho' Annex'd to the *Crown* of *England*, has always been look'd upon to be a *Kingdom* Compleat within it self, and to have all *Jurisdiction* to an *Absolute* *Kingdom* belonging, and Subordinate to no
Legi.

Legislative Authority on Earth. Tho^t,
 tis to be Noted, these *English Acts* re-
 lating to the Succession, and Recogniti-
 on of the Kings Title, do particularly
 Name *Ireland*.

As the *Civil State* of *Ireland* is thus
Absolute within it self, so likewise is our
State Ecclesiastical: This is manifest by
 the *Cannons* and *Constitutions*, and even
 by the *Articles* of the *Church of Ireland*,
 which differ in some things from those
 of the *Church of England*. And in all
 the *Charters* and *Grants* of *Liberties* and
Immunities to *Ireland*, we still find this,
 That *Holy Church* shall be *Free*, &c. I
 would fain know what is meant hereby
 the Word *Free*: Certainly if our *Church*
 be *Free* and *Absolute* within it self, our
State must be so likewise; for how our
Civil and *Ecclesiastical* Government is
 now interwoven, every Body knows.
 But I will not enlarge on this head, it
 suffices only to hint it; I shall detain
 my self to our *Civil Government*.

Another Argument against the Par-
 liament of *England's* Jurisdiction over
Ireland

Ireland, I take from a Record in *Reyley's Placita Parliamentaria*, pag. 569. to this effect : In the 14th of *Edward* the Second, the King sent his Letters Patents to the Lord Justice of *Ireland*, letting him know, That he had been moved by his *Parliament* at *Westminster*, that he would give Order that the *Irish Natives* of *Ireland*, might enjoy the *Laws* of *England* concerning *Life* and *Member*, in as large and ample manner as the *English* of *Ireland* enjoy'd the same. Thus therefore the King gives in Commandment, and orders accordingly, by these his Letters Patents. From hence, I say, we may gather, That the *Parliament* of *England* did not then take upon them to have any *Jurisdiction* in *Ireland*, (for then they would have made a Law for *Ireland* to this Effect) but instead thereof, they Apply to the *King*, that he would interpose his Commands, and give Directions that this great Branch of the *Common Law* of *England* should be put in Execution in *Ireland* indifferently to all the Kings Subject there, pursu-

ant to the *Original Compact* made with them on their first Submission to the Crown of *England*.

Let us now consider the great Objection drawn from a *Writ of Error's* lying from the *Kings Bench* of *England*, on a Judgement given in the *Kings Bench* in *Ireland*; which proves (as 'tis insisted on) that there is a *Subordination* of *Ireland* to *England*; and that if an *Inferiour* Court of Judicature in *England*, can thus take cognizance of, and overrule the Proceedings in the like Court of *Ireland*; it will follow, that the *Supream* Court of Parliament in *England* may do the same, in relation to the Proceedings of the Court of Parliament in *Ireland*.

It must be confess'd, that this has been the constant Practice; and it seems to be the great thing that induced my Lord Cook to believe that an Act of Parliament in *England*, and mentioning or Including *Ireland*, should Bind here. The Subordination of *Ireland* to *England*, he seems to infer from the Subordination
of

of the *Kings Bench* of *Ireland*, to the *Kings Bench* of *England*. But to this I Answer :

1. That 'tis the Opinion of several Learned in the Laws of *Ireland*, That this Removal of a Judgment from the *Kings Bench* of *Ireland*, by *Writ of Error*, into the *Kings Bench* of *England*, is founded on Act of Parliament in *Ireland*, which is lost amongst a great number of other Acts, which we want for the space of 130 Years at one time, and of 120 at another time, as we have noted before, pag. 65. But it being only a *General Tradition*, that there was such an Act of our Parliament, we only offer it as a *Surmise*, the Statute it self does not appear.

2. Where a Judgement in *Ireland* is Removed, to be Revers'd in *England*, the Judges in *England* ought and always do judge, according to the *Laws* and *Customs* of *Ireland*, and not according to the *Laws* and *Customs* of *England*, any otherwise than as these may be of Force in *Ireland*; but if in any thing the two *Laws* differ, the
Law

Law of *Ireland* must prevail, and guide their Judgment. And therefore in the Case of one *Kelly*, Removed to the *Kings Bench* in *England*, in the beginning of King *Charles* the First, one Error was Assigned that the *Præcipe* was of *Woods* and *Underwoods*, which is a manifest Error, if brought in *England*; but the Judges finding the Use to be *Otherwise* in *Ireland*, judged it *No Error*. So in *Crook, Charles*, fol. 511. *Mulcarry* vers. *Eyres*. Error was assigned for that the Declaration was of one hundred Acres of *Bogg*, which is a word not known in *England*; but 'twas said, It was well enough understood in *Ireland*, and so adjudged *No Error*.

From whence, I conceive, 'tis manifest, that the Jurisdiction of the *Kings Bench* in *England*, over a Judgment in the *Kings Bench* of *Ireland*, does not proceed from any Subordination of one Kingdom to the other; but from some other Reason, which we shall endeavour to make out.

3. We have before observed, That in the Reign of K. *Henry the Third*, *Gerard Fitz-Maurice*, Lord Justice of *Ireland*, sent four Knights to know what was held for Law in *England* in the Case of *Coparceners*. The Occasion of which Message (as before we have noted out of the Kings Rescript) was, because the Kings Justice of *Ireland* was ignorant what the Law was. We may reasonably imagine that there were many Messages of this kind; for in the Infancy of the *English* Government, it may well be supposed, that the Judges in *Ireland* were not so deeply versed in the Laws of *England*: This occasioned Messages to *England*, Before Judgment given in *Ireland*, to be inform'd of the Law. And After Decrees made, Persons who thought themselves aggrieved by *Erroneous* Judgments, apply'd themselves to the King in *England* for Redress. Thus it must be, that Writs of Error (unless they had their Sanction in Parliament) became in use. Complaints to the King by those that thought themselves injur'd, increased;

increased ; and at last grew into Custom, and obtained the Force of Law.

Perhaps it may be Objected, That if the Judges of the Kings Bench in *England* ought to Regulate their Judgment by the Customs of *Ireland*, and not of *England*, it will follow, that this Original which we assign of Writs of Error to *England*, is not right.

I Answer, That this may be the *Primary Original*, and yet consist well enough with what we have before laid down : For tho' the Common Law of *England* was to be the Common Law of *Ireland*, and *Ireland* at the beginning of its *English* Government might frequently send into *England* to be inform'd about it ; yet this does not hinder, but *Ireland*, in a long Process of Time, may have some smaller Customs and Laws of its own gradually but insensibly crept into Practice, that may in some measure differ from the Customs and Practice of *England* ; and where there is any such, the Judges of *England* must regulate their Sentence accordingly, tho'

the first Rise of Writs of Error to *England*, may be as we have here suggested. In like manner, where the Statute-Law of *Ireland* differs from that of *England*, the Judges of *England* will regulate their Judgments by the Statute-Law of *Ireland*: This is the constant Practice, and notoriously known in *Westminster-Hall*: From which it appears, that removing a Judgment from the Kings Bench of *Ireland*, to the Kings Bench of *England*, is but an Appeal to the King in his Bench of *England*, for his Sense, Judgment, or Exposition of the Laws of *Ireland*. But of this more hereafter.

4. When a *Writ of Error* is Returned into the Kings Bench of *England*, Suit is made to the *King only*; The Matter lies *Altogether before Him*; and the Party complaining applies to *No Part* of the Political Government of *England* for Redress, but to the *King of Ireland only*, who is in *England*: That the *King only* is sued to, our Law-Books make Plain. This Court is call'd *Curia Domini Regis*,
and

and *Aula Regia*, because the King used to sit there in Person, as *Lambard* tells us; And every Cause brought there, is said to be *coram Domino Rege*, even at this very Day, *Cook* 4 Inst. p. 72. Therefore if a Writ be returnable *coram nobis ubicunque fuerimus*, 'tis to be Returned to the *Kings Bench*. But if it be Returnable *coram Justiciariis nostris apud Westm.*, 'tis to be Return'd into the *Common Pleas*. This Court (as *Glanvil* and other Antients tells us) used to Travel with the King, wherever he went. And *Fleta*, in describing this Court, says, *Habet Rex Curiam suam & Justiciarios suos, coram quibus, & non alibi nisi coram semetipso, &c. falsa Judicia & Errores revertuntur & Corrigitur*. The King then (as *Britton* says) having Supream Jurisdiction in his Realm, to judge in all Causes whatsoever; therefore it is, that *Erroneous Judgments* were brought to him out of *Ireland*. But this does not argue, that *Ireland* is therefore *Subordinate to England*; for the People of *Ireland* are the *Subjects* of the King to whom

whom they Appeal. And 'tis not from the Country where the Court is held, but from the *Presence* and *Authority* of the King (to whom the People of Ireland have as good a Title as the People of England) that the *Præminence of the Jurisdiction* does flow, And I question not, but in former times, when these Courts were first Erected, and when the King Exerted a greater Power in Judicature than he does now, and he used to sit in his own Court, that if he had Travell'd into Ireland, and the Court had follow'd him thither; Erroneous Judgments might have been removed from England before him into his Court in Ireland; for so certainly it must be, since the Court Travell'd with the King. From hence it appears, that all the Jurisdiction, that the Kings Bench in England, has over the Kings Bench in Ireland, arises only from the *Kings Presence* in the former. And the same may be said of the Chancery in England, if it will assume any Power to Controul the Chancery in Ireland; because (as *Lambard* says, p, 69,

70.) The Chancery did follow the *Kings* as the *Kings Bench* did; and that, as he tells us out of the Lord Chief Justice *Scrope*, the *Chancery* and the *Kings Bench* were once but one Place. But if this be the ground of the Jurisdiction of the *Kings Bench* in *England*, over the *Kings Bench* in *Ireland*, (as I am fully persuaded it is,) the Parliament in *England* cannot from hence claim any Right of Jurisdiction in *Ireland*, because they claim a *Jurisdiction of their own*; and their Court is not the *Kings Court*, in that proper and strict sense that the *Kings Bench* is.

But granting that the Subordination of the *Kings Bench* in *Ireland*, to the *Kings Bench* in *England*, be rightly concluded from a *Writ of Error* out of the latter, lying on a Judgement in the former. I see no Reason from thence to conclude, that therefore the Parliament of *Ireland* is Subordinate to the Parliament in *England*, unless we make any one sort of Subordination, or in any one part of Jurisdiction, to be a Subordination in all

Points

Points, and all parts of Jurisdiction. The Subjects of *Ireland* may Appeal to the King in his Bench in *England*, for the *Expounding* of the *Old* common and Statute Law of *Ireland*; will it therefore follow that the Parliament of *England* shall make *New Laws* to bind the Subjects in *Ireland*? I see no manner of consequence in it; unless we take *Expounding Old Laws*, (or *Laws already made*) in the *Kings Bench*, and making new *Laws in Parliament*, to be one and the same thing. I believe the best Logician in *Europe*, will hardly make a Chain of *Syllogisms*, that from such *Premises*, will regularly induce such a *Conclusion*.

To close this Point, We find that a Judgment of the *Kings Bench* in *Ireland*, may be Removed by a Writ of Error to the Parliament in *Ireland*: But the Judgment of the Parliament of *Ireland* was never question'd in the Parliament of *England*. This appears from the *Prior of Lanthony's Case* aforegoing.

I shall conclude this our Fifth Article with a memorable Passage out of
our

our Irish Statutes, which seems to strengthen what we have delivered on the Business of a *Writ of Error*, as well as the chief Doctrine I drive at; and that is 28 *H. VIII.* Chap. 19. *The Act of Faculties.* This Statute is a Recital at large of the English Act of the 25 *Henry VIII.* c. 21. In the Preamble of which English Act 'tis Declared, *That this Your Graces Realm Recognizing no Superior but your Grace, hath been and yet is free from any Subjection to any Mans Laws, but only such as have been Devised within this Realm, for the Wealth of the same, or to such others, as by Sufferance of Your Grace and Your Progenitors, the people of the Realm have taken at their Free Liberties by their own Consent; and have bound themselves by long Use and Custom to the Observance of, &c.*

This Declaration. with the other Clauses of the said English Act, is *verbatim* recited in the Irish Act of *Faculties*; and in the said Irish Act it is Enacted, *That the said English Act, & every thing & things therein contained, shall be Establi-*

shed affirmed, Taken, Obe'y'd and Accepted within this Land of Ireland as a good and perfect Law, and shall be within the said Land of the same Force, Effect Quality, Condition, Strength and Vertue, to all Purposes and Intents, as it is within the Realm of England; (if so, then the said Clause declares our Right of being bound only by Laws to which we Consent, as it does the Right of the People of England) And that all Subjects within the said Land of Ireland, shall enjoy the Profit and Commodity thereof, in like manner as the Kings Subjects of the Realm of England.

I am now Arrived at our Sixth and Last Article Proposed, viz. The Reasons and Arguments that may be farther Offered on one side and t'other in this Debate.

I have before taken notice of the Title, England pretends over us from Conquest: I have likewise enquired into the Precedents on one side and t'other, from Acts of Parliament, from Records, and from Reports of the Learned in the Laws.

There

There remains another Pretence or two for this *Subordination*, to be Considered; and one is found on *Purchase*.

'Tis said, That vast Quantity of Treasure, that from time to time has been spent by *England* in Reducing the Rebellions and carrying on the Wars of *Ireland*, has given them a just Title at least to the *Lands*, and *Inheritances* of the Rebels, and to the absolute Disposal thereof in their Parliament; And as particular Examples of this, we are told of the great Sums Advanced by *England* for suppressing the Rebellion of the *Irish* Papists in 41. and Opposing the late Rebellion since King *WILLIAM*'s Accession to the Throne.

To this I Answer, That in a War there is all Reason imaginable, that the Estates of the Unjust Opposers should go to repair the Damage that is done. This I have briefly hinted before. But if We consider the Wars of *Ireland*, we shall perceive they do not resemble the common Case of Wars between two Foreign Enemies; Ours are rather Robelli-

ons, or *Intestine Commotions*; that is, The *Irish Papists* rising against the *King* and *Protestants* of *Ireland*; and then 'tis plain, that if these Latter, by the Assistance of their Brethren of *England*, and their Purse, do prove Victorious, the People of *England* ought to be fully Repaid: But then the manner of their Payment, and in what way it shall be Levied, ought to be left to the People of *Ireland* in Parliament Assembled: And so it was after the Rebellion of 41. The *Adventurers* then were at vast Charges, and there were several Acts of Parliament in *England* made for their Re-imbursing, by disposing to them the Rebels Lands. But after all, it was thought Reasonable, that the Parliament of *Ireland* should do this in their own way; and therefore the *Acts of Settlement* and *Explanation*; made all the former *English Acts* of *No Force*; or at least did very much *Alter* them in many Particulars, as we have Noted before. In like manner we allow that *England* ought to be repaid all their Expences in supressing
thus

this late Rebellion: All we desire is, That, in Preservation of our own Rights and Liberties, we may do it in our own Methods regularly in our own Parliament: And if the Re-imbursment be all that *England* stands upon, what availeth it whether it be done this way or that way, so it be done? We have an Example of this in Point between *England* and *Holland* in the Glorious Revolution under His Present Majesty: *Holland* in Assisting *England* Expended 600000 Pounds, and the *English* Parliament fairly repay'd them: It would have look'd oddly for *Holland* to have insisted on Disposing of Lord *Powis's* and other Estates, by their own Laws, to re-imburse themselves.

'Tis an Ungenerous thing to vilifie good Offices, I am far from doing it, but with all possible Gratitude, Acknowledge the Mighty Benefits *Ireland* has often receiv'd from *England*, in helping to suppress the Rebellions of this Country; To *England's* Charitable Assistance our Lives and Fortunes are owing: But
may

with all humble Submission, I desire it may be considered, whether *England* did not at the same time propose the *Prevention of their own Danger*, that would necessarily have attended our Ruine; if so, 'twas in some measure their own *Battles* they fought, when they fought for *Ireland*; & a great part of their Expence must be reckon'd in their own *Defence*.

Another thing alledged against *Ireland* is this: If a Foreign Nation, as *France* or *Spain* for instance, prove prejudicial to *England*, in its Trade, or any other way; *England*, if it be stronger, redresses it self by Force of Arms, or Denouncing War; and why may not *England*, if *Ireland* lies cross their Interests, restrain *Ireland*, and bind it by Laws, and maintain these Laws by Force?

To this I answer: First, That it will hardly be instanced, that any Nation ever Declared War with another, meerly for over-topping them in some signal Advantage, which otherwise, or but for their Endeavours, they might have reaped. War only is justifiable for

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Injustice done, or *Violence* offer'd, or *Rights* detain'd. I cannot by the Law of Nations, quarrel with a Man; because he, going before me in the Road, finds a Piece of Gold, which possibly if he had not taken it up, I might have light upon and gotten. 'Tis true, we often see Wars commenced on this Account *under-hand*, and on Emulation in Trade and Riches, but then this is never made the *Open Pretence*, some other Colour it must receive, or else it would not look *fair*; which shews plainly, that this Pretence of *being prejudicial*, or of reaping Advantages which otherwise you might partake of, is not *Justifiable* in it self. But granting that it were a good Justification of a War with a *Foreign Nation*, it will make nothing in the Case between *England* and *Ireland*; for if it did, why does it not operate in the same manner between *England* and *Scotland*, and consequently in like manner draw after it *England's* binding *Scotland* by their Laws at *Westminster*: We are all the *same Kings* Subjects, the Children of
one

one *Common Parent*, and tho' we may have our *Distinct Rights* and *Inheritan-ces* absolutely within our selves; yet we ought not, when these do chance a little to interfere to the prejudice of one or t' other side, immediatly to treat one another as *Enemies*; fair *Amicable Propositions* should be proposed, and when these are not hearkned to, then 'tis time enough to be at *Enmity*, and use *Force*.

The last thing I shall take Notice of, that some raise against us, is, That *Ireland* is to be look'd upon only as a *Colony* from *England*: And therefore as the *Roman Colonies* were subject to, and bound by, the *Laws* made by the *Senate* at *Rome*, so ought *Ireland* by those made by the *Great Council* at *Westminster*. Of all the *Objections* raised against us, I take this to be the most *Extravagant*; it seems not to have the least *Foundation* or *Colour* from *Reason* or *Record*: Does it not manifestly appear by the *Constitution* of *Ireland*, that 'tis a *Compleat Kingdom* within it self? Do not the *Kings* of *England* bear, the *Stile* of *Ireland*, amongst

mongst the rest of their Kingdoms? Is this agreeable to the nature of a *Colony*? Do they use the Title of Kings of *Virginia*, *New-England*, or *Mary-Land*? was not *Ireland* given by *Henry* the Second in a Parliament at *Oxford* to his Son *John*, and made thereby an *Absolute Kingdom*, *separate* and wholly *Independent* on *England*, till they both came United again in him, after the Death of his Brother *Richard*, without Issue? Have not multitudes of Acts of Parliament both in *England* and *Ireland*, declared *Ireland* a *Compleat Kingdom*? Is not *Ireland* stiled in them All, the *Kingdom*, or *Realm* of *Ireland*? Do these Names agree to a *Colony*? Have we not a Parliament, and Courts of Judicature? Do these things agree with a *Colony*? This on all hands involves so many Absurdities, that I think it deserves nothing more of our Consideration.

These being the only remaining Arguments that are sometimes mention'd Against us, I now proceed to offer what

I humbly conceive *Demonstrates* the Justice of our Cause.

And herein I must beg the Reader's Patience, if now and then I am forced lightly to touch upon some Particulars foregoing. I shall Endeavour all I can to avoid prolix Repetitions; but my Subject requires that sometimes I just mention, or refer to, several Notes before delivered.

First therefore, I say, *That Ireland should be Bound by Acts of Parliament made in England, is against Reason, and the Common Rights of all Mankind.*

All Men are by Nature in a State of Equality, in respect of Jurisdiction or Dominion: This I take to be a Principle in it self so evident that it stands in need of little Proof. 'Tis not to be conceiv'd, that Creatures of the same Species & Rank, promiscuously born to all the same Advantages of Nature, and the use of the same Faculties, should be Subordinate and Subject one to another; These to this or that of the same Kind. On this Equality in Nature is founded that Right which

which all Men claim, of being free from all Subjection to Positive Laws, till by their own *Consent* they give up their Freedom, by entering into Civil Societies for the common Benefit of all the Members thereof. And on this *Consent* depends the *Obligation* of all *Humane Laws*; insomuch that without it, by the Unanimous Opinion of all *Jurists*; no Sanctions are of any Force. For this let us Appeal, amongst many, only to the Judicious Mr. *Hooker's Eccles. Polity*. Book 1. Sec. 10. London Edit. 1676 Thus He.

Howbeit, Laws do not take their Constraining force from the Quality of such as Devise them, but from that Power which doth give them the strength of Laws. That which we spake before, concerning the Power of Government, must here be applied to the Power of making Laws whereby to Govern, which Power God hath over All; and by the Natural Law, whereunto he hath made all subject, the lawful Power of making Laws, to command whole Politick Societies of Men, belongeth so properly un-

to the same intire Societies, that for any Prince or Potentate, of what kind soever upon Earth, to exercise the same of himself, and not either by expresse Commission immediatly and personally receiv'd from God, or else by Authority derived at the first from their Consent, upon whose Persons they impose Laws, it is no better than meer Tyrranny. Laws they are not therefore, which Publick Approbation hath not made so: But Approbation not only they give who Personally declare their Assent by Voice, Sign, or Act; but also when others do it in their Names, by Right Originally, at the least, derived from them; As in Parliaments, Councils, &c.

Again, Sith Men Naturally have no full and perfect Power to command whole Politick Multitudes of Men; therefore utterly without our Consent, we could in such sort be at no Mans Commandment Living. And to be commanded we do consent, when that Society whereof we are part, hath at any time before consented, without revoking the same after by the like Universal Agreement.

ment. Wherefore as any Mans Deed past is good, as long as himself continueth, so the Act of a Publick Society of Men, done five hundred years sithence, standeth as theirs who presently are of the same Societies, because Corporations are immortal; we were then alive in our Predecessors, and they in their Successors do still live. Lawstherefore Humane of what kind soever, are available by Consent, &c.

And again, But what matter the Law of Nations doth contain, I omit to search; the strength and vertue of that Law is such, that no particular Nation can lawfully prejudice the same by any their severall Laws and Ordinances, more than a Man by his Private Resolutions the Law of the whole Commonwealth or State wherein he liveth; for a Civil Law being the Act of a whole body Politick, doth therefore overrule each Civil part of the same body; So there is no reason that any one Common Wealth of it self, should to the prejudice of another, annihilate that whereupon the whole World hath agreed.

To the same purpose may we find the
Universal

Universal Agreement of all Civilians, *Grotius Puffendorf, Lock's Treat. Government*, No one or more Men, can by Nature challenge any *Right, Liberty or Freedom*, or any Ease in his *Property, Estate or Conscience*, which all Men have not an other *Equall Just Claim to*. Is *England* a *Free People*? So ought *France* to be. Is *Poland* so? *Turky* likewise, and all the *Eastern Dominions*, ought to be so: And the same runs throughout the whole *Race of Mankind*.

Secondly, 'Tis against the *Common Laws of England*, which are of Force both in *England* and *Ireland*, by the *Original Compact* before hinted. It is declared by both Houses of the Parliament of *England*, 1 Jac. cap. 1. *That in the High Court of Parliament, all the whole Body of the Realm, and every particular Member thereof, either in Person, or by Representation (upon their own Free Elections) are by the Laws of this Realm deem'd to be Personally present*. Is this then the common Law of *England*, and the Birthright of every Free-born *English*

ish Subject? And shall we of this Kingdom be deny'd it, by having Laws imposed on us, where we are neither Personally, nor Representatively present? My Lord Cooke in his 4th Inst. cap. 1. saith, That all the Lords Spiritual and Temporal, and all the Commons of the whole Realm, ought ex Debito Justiciæ to be Summon'd to Parliament, and none of them ought to be Omitted. Hence it is call'd Generale Concilium in the Stat. of Westminster. 1. and Commune Concilium, because it is to comprehend all Persons and Estates in the whole Kingdom. And this is the very Reason given in the Case of the Merchants of Waterford foregoing, why Statutes made in England, should not Bind them in Ireland, Quia non habent Milites hic in Parlamento; Because they have no Representatives in the Parliament of England. My Lord Hobbard in the Case of Savage and Day, pronounced it for Law, That whatever is against Natural Equity and Reason, is against Law; Nay, if an Act of Parliament were made against Natural Equity and Reason,

Reason, that Act was void. Whether it be not against Equity and Reason, that a Kingdom regulated within it self, and having its own Parliament, should be Bound *without their Consent*, by the Parliament of another Kingdom, I leave the Reader to consider. My Lord Cooke likewise in the first Part of his Institutes, fol. 97. b. saith, *Nihil quod est contra Rationem est Licitum*. And in the old *Modus Tenendi Parliamenta* of England, said to be writ about *Edward the Confessor's* time; and to have been Confirmed and Approved by *William the Conqueror*: It is Expresly declared; That all the *Lords Spiritual and Temporal, and the Knights, Citizens, and Burgesse*s ought to be Summoned to Parliament. The very same is in the *Modus* sent into Ireland by *Henry the 2d.* And in *King John's Great Charter* dated 17. *Johannis*, 'tis granted in these words, *Et ad habend. Commune Concilium Regni de Auxiliis & Scutagiis Assidendis, Submoneri faciemus Archiepiscopos, Episcopos, Abbates, Comites, & Majores Barones, Regni Sigilla-*
tim

tim per Literas Nostras, & faciemus sub-
moneri in generali per Vicecomites omnes
alios, &c. Math. Paris ad An. 17. Jo-
hann. All are to be Summoned to Par-
 liament, the Nobility by special Writs ;
 the Commons by general Writs to the
 Sheriffs. And is this the Common Law
 of England? Is this part of those *Liberæ*
Consuetudines, that were contained in
 the Great Charter of the Liberties of
 the People of England; And were so so-
 lemnly granted by Henry II. King John,
 and Henry the 3d, to the People of Ire-
 land, that they shou'd Enjoy and be Go-
 vern'd by ; and unto which they were
 Sworn to be Obedient ; And shall they
 be of Force only in England, and not in
 Ireland? Shall Ireland Receive these
 Charters of Liberties, and be no Parta-
 kers of the Freedoms therein contained?
 Or do those Words signifie in England
one thing, and in Ireland *no such thing*?
 This is so repugnant to all Natural Rea-
 son and Equity, that I hope no Ratio-
 nal Man will Contest it : I am sure if
 it be so, ther's an end of all Speech a-
 mongst

mongst Men; All Compacts, Agreements, and Societies, are to no purpose.

3. It is against the Statute Laws both of *England*, and *Ireland*: This has been pretty fully discuss'd before; however I shall here again take notice, That in the 10. of *Henry* the 4th it was Enacted in *Ireland*, that Statutes made in *England* should not be of Force in *Ireland*, unless they were Allowed and Published by the Parliament of *Ireland*. And the like Statute was made the 29th of *Henry* the 6th. And in the 10th Year of *Henry* the 7th. Chap. 23 Irish Statutes, The Parliament which was held at *Drogheda*, before Sir *Christopher Preston*, Deputy to *Jaspar* Duke of *Bedford*, Lieutenant of *Ireland*, was declared Void, for this Reason amongst others. That there was no General Summons of the said Parliament to all the Shires, but only to Four. And if Acts of Parliament made in *Ireland* shall not Bind that People, because some Counties were omitted: how much less shall either their Persons or Estates be Bound

Bound by those Acts made in *England*, whereat no one County, or Person of that Kingdom is present? In the 25th. of *Edward* the first. Cap. 6. It was Enacted by the Parliament of *England* in these Words. *Moreover from henceforth we shall take no manner of Aid, Taxes, or Prizes, but by the Common Assent of the Realm.* And again in the Statute of *Liberties*, by the same King, Cap 1. *De Tallag. non Concedend.* It is Enacted in these Words. *No Tallage or Aid shall be taken or Levy'd by Us, or Our Heirs, in Our Realm, without the Good Will and Assent of Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other Freemen of the Land.* The like Liberties are specially Confirm'd to the Clergy, the 14th. of *Edward* the 3d. And were these Statutes, and all other Statutes and Acts of the Parliament of *England* Ratified, Confirmed and Adjudged by several Parliaments of *Ireland* to be of Force within this Realm: And shall the People of *Ireland* receive no Benefit by those Acts? Are those Sta-

tutes of Force in *England* only? And can they add no Immunity or Priviledge to the Kingdom of *Ireland*, when they are received there? Can the King and Parliament make Acts in *England* to Bind his Subjects of *Ireland* without *their Consent*; And can he make Acts in *Ireland* with their *Consent*, whereby they may receive any Priviledge or Immunity? This were to make the *Parliaments of Ireland* wholly *Illusory*, and of no effect. If this be reasonable Doctrine, To what end was *Poyning's Law* in *Ireland*, that makes all the Statutes of *England* before that, in Force in this Kingdom? This might as well have been done, and again undone, when they please, by a single Act of the English Parliament. But let us not make thus light of Constitutions of Kingdoms, 'tis *Dangerous* to those who *do it*, 'tis *Grievous* to those that *suffer it*..

Moreover, had the King or his Council of *England*, in the 10th year of *Hen. VII.* in the least dreamt of this Doctrine, to what end was all that strict Pro-
vision

vision made by *Poyning's Act*, Irish
 Stat. cap. 4. That no Act of Parlia-
 ment should pass in *Ireland*, before it
 was first Certified by the Chief Gover-
 nour and Privy Council here, under the
 Broad Seal of this Kingdom, to the
 King and his Privy Council in *England*,
 and received their Approbation, and by
 them be remitted hither under the Broad
 Seal of *England*, here to be pass'd into a
 Law? The design of this Act seems to
 be the Prevention of any thing passing
 in the Parliament of *Ireland* *Surreptiti-*
ously, to the *Prejudice of the King*, or the
English Interest of Ireland. But this
 was a needless Caution, if the King,
 and Parliament of *England*, had Power
 at any time to Revoke or annul any
 such Proceedings. Upon this Act of
Paynings, many and various Acts have
 pass'd in *Ireland*, relating to the Explana-
 tion, Suspension, or farther Corobo-
 ration thereof, in divers Parliaments,
 both in *Henry the Eighth's*, *Philip* and
Mary's, and Queen *Elizabeths* Reigns;
 for which see the Irish Statutes. All
 which

which shew that this *Doctrine* was hardly so much as *Surmised* in those days, however we come to have it raised in these *Latter times*.

Fourthly, 'Tis against several *Charters* of *Liberties* Granted unto the Kingdom of *Ireland*: This likewise is clearly made out by what foregoes. I shall only add in this place, That in the Patent Roll of the 17 *Rich. 2. m. 34. de Confirmatione*, There is a Confirmation of several *Liberties* and *Immunities* granted unto the Kingdom and People of *Ireland* by *Edward III.* The Patent is somewhat long, but so much as concerns this Particular, I shall render *verbatim*, as I have it Transcribed from the Roll by *Sir William Domvil*, Attorney General in *Ireland* during the whole Reign of *K. Charles II. Rex omnibus &c. Salutem: Inspeimus Literas patentes Domini Edwardi nuper Regis Angliæ, Av. nostri fact. in hæc verba, Edwardus Dei Gra. Rex Angliæ & Franciæ & Dominus Hiberniæ, Archiepiscopis, Episcopis, Abatibus, Prioribus, Ministris nostris tam Majoribus, quam*
Mi-

Minoribus & quibuscumque aliis de Terra no-
 stra Hiberniæ fidelibus nostris ad quos Præ-
 sentes Literæ pervenerint, Salutem: Quia,
 &c. Nos hæc quæ sequuntur Ordinanda Duxi-
 mus & firmiter observanda, &c. Imprimis,
 viz. Volumus & Præcipimus quod Sancta
 Hibernicana Ecclesia suas Libertates &
 Liberas Consuetudines illæsas habeat, & eis
 Libere gaudeat & Utatur. Item volumus
 & præcipimus quod nostra & ipsius Terræ
 Negotia præsertim Majora & Ardua in
 Consiliis per Peritos Consiliarios nostros ac
 Prælatos & Magnates & quosdam de Dis-
 cretioribus & Probioribus Hominibus de
 partibus vicinis ubi ipsa Concilia teneri
 Contigerit propter hoc evocandos, in Par-
 liamentis vero per ipsos Consiliarios nostros
 ac Prælatos & Proceras aliosque de terra
 prædicta prout Mos Exegit secundum Justi-
 tiam Legem Consuetudinem & Rationem
 tractentur deducantur & fideliter timore fa-
 vore odio aut prætio postpositis discutian-
 tur ac etiam terminentur, &c. In Cujus
 Rei Testimonium has Literas nostras fieri
 fecimus Patentes Teste meipso Apud West-
 minst. 25. die Octob. Anno Regni nostri
 Angliæ

Angliæ 31, Regni vero Franciæ 18. Nos autem Ordinationes Voluntates & Præcepta Prædicta ac omnia alia & singula in Literis prædictis Contenta Rata Habentes & Grata Ea pro nobis & Hæredibus nostris quantum in nobis est Acceptamus, Approbamus, Ratificamus, & Confirmamus prout Literæ prædictæ rationabiliter testantur. In Cujus, &c. Test. Reg. apud Westminst. 26. die Junii.

Fifthly, It is inconsistent with the *Royalties* and *Præeminence* of a *Separate* and *Distinct Kingdom*, That we are thus a *Distinct Kingdom*, has been clearly made out before. 'Tis plain, The Nobility of *Ireland*, are an Order of Peers clearly *Distinct* from the Peerage of *England*, the Priviledges of the one, extend not into the other Kingdom; a Lord of *Ireland* may be Arrested by his Body in *England*, and so may a Lord of *England* in *Ireland*, whilst their Persons remain Sacred in their respective Kingdom; A *Voyage Royal* may be made into *Ireland*, as the Year Book, 11 *Hen. 4.* 17 fol. 7. and Lord
Cook

Cook tells us; and King John in the 12th year of his Reign of *England*; made a *Voyage Royal* into *Ireland*; and all his Tenants in Chief, which did not attend him in that Voyage, did pay him *Escuage*, at the Rate of Two Marks for every *Knights Fee*; which was imposed *Super Prælatiſ & Baronibus pro Paſſagio Regis in Hibernia*, as appears by the Pipe-Roll. *Seutag. 12 Johannis Regis in Scaecaria Angl.* Which ſhews that we are a *Compleat Kingdom* within our ſelves; and not little better than a *Province*, as ſome are ſo Extravagant as to Aſſert; none of the Properties of a *Roman Province* agreeing in the leaſt with our Constitution. 'Tis Reſolved in Sir Richard Pembrough's Caſe in the 44th of *Edw. III.* That Sir Richard might lawfully reſuſe the King to ſerve him as his *Deputy* in *Ireland*, and that the King could not Compel him thereto, for that were to Banish him into another Kingdom, which is againſt *Magna Charta*, Chap. 29. Nay, even tho' Sir Richard had great Tenures from the King, *pro*

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ſet:

(162)
Servitio Impenso & Impendendo, for that
was said must be understood within the
Realm of England, *Cooks* 2d Inst. pag.
47. And in *Pilkington's* Case afore-
mention'd, *Fortescue* declared, That the
Land of *Ireland* is and at all times hath
been a *Dominion Separate and Divided* from
England. How then can the Realms of
England and *Ireland*, being *Distinct King-*
doms & Separate Dominions, be imagin'd
to have any *Superiority* or *Jurisdic-*
tion the one over the other. 'Tis absurd
to fancy that Kingdoms are *Separate*
and *Distinct* meerly from the *Geographi-*
cal Distinction of Territories. Kingdoms
become *Distinct* by *Distinct Jurisdic-*
tions, and *Authorities Legislative and Execu-*
tive; and as *Rex est qui Regem non ha-*
bet, so *Regnum est quod alio non Subjici-*
tur Regna: A Kingdom can have no
Supream; 'tis in it self *Supream* within
it self, and must have all *Jurisdic-*
tions, *Authorities* and *Præeminencies* to the
Royal State of a Kingdom belonging,
or else 'tis none: And that *Ireland* has
all these, is declared in the *Irish Stat.*

33 *Hen. VIII. c. 1.* The chief of these most certainly is, the *Power of Making and Abrogating its own Laws*, and being bound only by such to which the *Community* have given their *Consent*.

Sixthly, it is *against the Kings Prerogative*, that the *Parliament of England* should have any *Co-ordinate Power* with Him, to introduce *New Laws*, or *Repeal Old Laws Established in Ireland*. By the *Constitution of Ireland* under *Poyning's Act*, the *King's Prerogative* in the *Legislature* is advanced to a much higher Pitch than ever was *Challenged* by the *Kings in England*, and the *Parliament of Ireland* stands almost on the same bottom, as the *King* does in *England*; I say almost on the same bottom, for the *Irish Parliament* have not only a *Negative Vote* (as the *King* has in *England*) to whatever *Laws* the *King* and his *Privy Councils* of both or either *Kingdoms*, shall lay before them; but have also a *Liberty of Proposing* to the *King* and his *Privy Council* here, such *Laws* as the *Parliament of Ireland* think

expedient to be pass'd. Which Laws being thus Proposed to the King, and put into form, and Transmitted to the Parliament here, according to *Poyning's Act*, must be Pass'd or Rejected in the very Words, even to a Title, as they are laid before our Parliament, we cannot alter the least *Iota*. If therefore the Legislature of Ireland stand on this Foot, in relation to the King, and to the Parliament of Ireland; and the Parliament of England do Remove it from this Bottom, and Assume it to themselves, where the Kings Prerogative is much Narrower, and as it were Reversed, (for there the King has only a *Negative Vote*) I humbly conceive 'tis an *Incroachment* on the Kings Prerogative: But this I am sure, the Parliament of England will be always very Tender of, and His Majesty will be very loth to have such a Precious Jewel of his Crown handled ruffly. The Happiness of our Constitutions depending on a right Temperament between the Kings and the Peoples Rights.

Seventhly, It is against the Practice of
all

all former Ages. Wherein can it appear, that any Statute made in *England*, was at any time since the Reign of *Henry the Third*, allowed and put in practise in the Realm of *Ireland*, without the Authority of the Parliament of *Ireland*. Is it not manifest by what forgoes, that from the Twentieth of King *Henry the Third*, to the Thirteenth of *Edward the Second*, and from thence to the Eighteenth of *Henry the Sixth*, and from thence, to the Thirty-Second of *Henry the Sixth*, and from thence, to the Eighth of *Edward the Fourth*, and from thence, to the Tenth of *Henry the Seventh*, there was special care taken to Introduce the Statutes of *England*, (such of them as were necessary or convenient for this Kingdom) by degrees, and always with Allowance, and Consent of the Parliament and People of *Ireland*. And since the General Allowance, of all the *English* Acts and Statutes in the Tenth of *Henry the Seventh*, there have several Acts of Parliament, which were made in *England*

the Reigns of all the Kings from that Time, Successively to this very Day, been particularly Receiv'd by Parliament in *Ireland*, and so they become of force here, and not by reason of any *General Comprehensive* words, as some Men have lately fancied. For if by *General Comprehensive Words*, the Kingdom of *Ireland* could be bound by the Acts of Parliament of *England*, what needed all the former *Receptions* in the Parliament of *Ireland*, or what use will there be of the Parliament of *Ireland* at any time? If the Religion, Lives, Liberties, Fortunes, and Estates of the Clergy, Nobility, and Gentry of *Ireland*, may be dispos'd of, without their *Privy* and *Consent*, what Benefit have they of any Laws, Liberties, or Priviledges granted unto them by the Crown of *England*? I am loth to give their Condition an hard Name; but I have no other Notion of *Slavery*, but being Bound by a Law to which I do not Consent.

Eightly, 'Tis against several *Resolutions* of the *Learned Judges*, of former times

times in the very Point in Question. This is manifest from what foregoes in the Case of the *Merchants of Waterford*, *Pilkington's Case*, *Prior of Lanthony's Case*, &c. But I shall not here enlarge farther thereon.

Ninthly, The Obligation of all Laws having the same Foundation, if One Law may be Imposed without Consent, any other Law whatever, may be Imposed on us *Without our Consent*. This will naturally introduce *Taxing us without our Consent*; and this as necessarily destroys our Property. I have no other Notion of Property, but a Power of *Disposing my Goods as I please*, and not as another shall Command: Whatever another may *Rightfully* take from me *without my Consent*; I have certainly no Property in. To Tax me without Consent, is little better, if at all, than *down right Robbing me*. I am sure the Great Patriots of Liberty and Property, the Free People of *England*, cannot think of such a thing, but with Abhorrence.

Lastly,

Lastly, The People of *Ireland* are left by this Doctrine in the greatest Confusion and Uncertainty Imaginable. We are certainly bound to Obey the Supreme Authority over us; and yet hereby we are not permitted to know who or what the same is; whether the Parliament of *England*, or that of *Ireland*, or both; And in what Cases the One; and in what the other: Which Uncertainty is or may be made a Pretence at any time for Disobedience. It is not impossible but the Different Legislatures we are subject to, may Enact Different or Contrary Sanctions: Which of these must we obey?

To conclude all, I think it highly Inconvenient for *England* to Assume this Authority over the Kingdom of *Ireland*. I believe there will need no great Arguments to convince the Wise Assembly of English Senators, how inconvenient it may be to *England*, to do that which may make the Lords and People of *Ireland* that they are not well used, and may drive them into Discontent.

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The Laws and Liberties of *England* were granted above five hundred years ago to the People of *Ireland*, upon their Submissions to the Crown of *England*, with a Design to make them *Easie* to *England*, and to keep them in the Allegiance of the King of *England*. How Consistent it may be with True Policy, to do that which the People of *Ireland* may think is an *Invasion* of their Rights and Liberties, I do most humbly submit to the Parliament of *England* to Consider. They are Men of *Great Wisdom, Honour and Justice*, and know how to prevent all future *Inconveniencies*. We have heard great Out-cries, and deservedly, on breaking the *Edict of Nantes* and other Stipulations; how far the Breaking our Constitution, which has been of Five Hundred years standing exceeds that, I leave the World to judge. It may perhaps be urg'd, That 'tis *convenient* for the State of *England*, that the *Supream Council* thereof should make their Jurisdiction as Large as they can. But with Submission, I conceive that

if this *Assumed Power* be not *Just*, it cannot be *convenient* for the State what *Cicero* says in his, *Offices Nihil est Utile, nisi idem sit Honestum*, is most certainly true. Nor do I think, that 'tis any wise necessary to the *Good of England* to *Affert* this *High Jurisdiction* over *Ireland*. For since the *Statutes* of this *Kingdom* are made with such *Caution*, and in such *Form*, as is prescribed by *Foyning's Act* 10. *H. 7*; and by the 3d and 4th of *Phil.* and *Mar.* and whilst *Ireland* is in *English hands*, I do not see how 'tis possible for the *Parliament of Ireland* to do any thing that can be in the least prejudicial to *England*. But on the other hand, if *England* assume a *Jurisdiction* over *Ireland*, whereby they think their *Rights* and *Liberties* are taken away; That their *Parliaments* are rendred meerly nugatory, and that their *Lives* and *Fortunes* Depend on the *Will* of a *Legislature* wherein they are not parties; there may be ill Consequences of this. Advancing the *Power* of the *Parliament of England* by breaking the *Rights* of an other, may in time have ill Effects. The

The *Rights of Parliament* should be preserv'd *Sacred* and *Inviolable*, wherever they are found. This kind of Government, once so *Universal* all over *Europe*, is now almost *Vanished*, from amongst the Nations thereof. Our Kings Dominions are the only Supporters of this noble *Gothick Constitution*, save only what little remains may be found thereof in *Poland*. We should not therefore make so light of that sort of Legislature, and as it were Abolish it in One Kingdom of the Three, wherein it appears; but rather Cherish and Encourage it wherever we meet it.

F I N I S.

(1812)

The first of the following is a list of the names of the persons who have been admitted to the office of the Secretary of the Board of Education since the first of January 1812. The names are arranged in alphabetical order. The names of the persons who have been admitted to the office of the Secretary of the Board of Education since the first of January 1812 are as follows: [illegible text]



[Faint, mostly illegible text at the bottom of the page, possibly a continuation of the list or a concluding paragraph.]